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JOHN MURRAY, ALBEMARLE STREET.

THE
ENGLISH CONSTITUTION.



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A MANUAL
OF THE
ENGLISH CONSTITUTION;

WITH A REVIEW
OF
ITS RISE, GROWTH, AND PRESENT STATE.

By DAVID ROWLAND.

\\

LONDON:
JOHN MURRAY, ALBEMARLE STREET.

1859.

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PREFACE.

My object, in the following work, has been to trace, historically, the rise and growth of the English Constitution, down to the period when our political institutions had acquired all the elements of their present maturity,—that is, to the Revolution; and then to describe and explain the rights, duties, and mutual action of those institutions as they now exist, modified by changes in the laws, and by Parliamentary Government and procedure since the Revolution. The work originated in a lecture I delivered in 1854; and I have employed the leisure which a retirement of three years from the profession of the Law has afforded me, and in that employment found a pursuit congenial to my former professional occupations, to amplify and extend it. The result is the present book, which I venture to hope may be found to contain a concise but comprehensive account of the Constitution;—of its institutions; of the legislation by which the freedom and rights it confers on the people have been secured; and of its merits and advantages as a system of Government.

The history follows the course of our Parliamentary career and legislation; and considering it subordinate to the main design of the treatise, I have in general

limited the narrative to such events and circumstances as seemed sufficient to elucidate our constitutional progress. But in describing the reigns of the Tudor and Stuart sovereigns, when the endeavours of the Parliament to advance the principles of Freedom, gave rise to contests with the Crown, which should always be remembered in connection with the liberties they established, I have expanded the history, in order to give some idea of the nature of the struggle, and the motives and conduct of the contending powers.

The progress of civil government and legislation, and the degree in which freedom was enjoyed by the people, very much depended, especially after the Reformation, on the prevailing ecclesiastical policy of the sovereign or the Parliament; I have therefore treated the Constitution as both civil and ecclesiastical, so far as the latter is exhibited in laws having reference to the civil or religious liberty of the people.

The arrangement of my book has enabled me to comprise within it more ample details of the history, of the existing working state of the Constitution, and of its laws, civil and ecclesiastical, than I have found combined in any treatise on the Constitution that has come under my observation. The great works of Mr. Hallam on constitutional history terminate with the reign of George II., and although they abound with illustrative observations which refer to the modern Constitution, they do not profess to give a systematic account of it. Those learned and critical works stand out prominently in constitutional literature; and I shall esteem it no inconsiderable merit if my book be found useful as an introduction to the study of them.

Every one who has lately noticed the current of public thought must have observed increasing attention to the principles and working of the Constitution. Our close intercourse with Continental nations has brought our constitutional system into strong contrast with the energy, unrestrained action, and secrecy of despotic government; whilst at home the principles of the Constitution are appealed to, to support or to controvert proposed changes of an important character. This day, whilst I write, 'The Times' has, in forcible language, represented the general demand that exists for an accurate history of the country, of reasonable length, for the use of the numerous persons who present themselves for the various examinations now required. It is worth consideration, whether the history of the country, now so extended as well in subject-matter as in period, would not be best presented to students in treatises exclusively devoted to separate branches of the general history. Of these the foundation would be, as the most essential and practical, the Constitution and constitutional laws; a knowledge of which it is the object of this Manual to supply.

Sydenham, Kent,

4th November, 1859.



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THE ENGLISH CONSTITUTION.

PART I.

ITS RISE AND GROWTH.

CHAPTER I.

Introductory.—Proposed Inquiry.—Supreme Powers of Government.—
Three simple Forms of Government.—Their Union recommended.—
Accomplished by the English Constitution.—Advantages of that
Union.—Sources of Information.—Records.—Statutes.

CONSTITUTIONAL government, in a State or nation, implies a limitation or restriction of absolute sovereignty; and the existence of certain fundamental political principles, laws, and rights, in conformity with which the government is carried on, and the allegiance of the people is conceded. When the term is applied to monarchy, it signifies monarchy limited by law, and controlled by the admission of the people to some participation in the making of the laws, and to more or less influence in the affairs of the State. This is constitutional, or limited monarchy; and the English constitution is pre-eminent as an example of that form of government. We are accustomed to speak of it as our glorious constitution; conscious that, under its protection, we enjoy unexampled personal and political liberty. It is proposed to inquire why it is glorious; what are its principles,—its institutions, whence and how they arose; what are their several powers, rights, and duties, and the modes of their

separate and combined action ; and what are the laws which give and secure to the people the personal and political liberty they enjoy.

The supreme powers of government are two, the legislative and the executive ; the latter, (at least in the English constitution), as the source from which all inferior magistrates derive their authority, includes the judicial power, as well as the execution of the laws, and the administration of the affairs of the State, at home and abroad. It is the committing of these two powers (or of the legislative power alone, as supreme, when the executive is separate, and has no share in the legislation) to one, to a few, or to many, that determines the form of the government. Thus there are three simple forms,—monarchy, where the sovereign power is committed to one, as a king or emperor ; aristocracy, where it is vested in the chief persons of the State, or the nobles ; and democracy, where the people hold the supreme power themselves, and employ it in making the laws, and in executing them by officers of their own appointment.¹ Under all these forms of government, when righteously administered, freedom and happiness may be attainable ; but experience has proved that each contains peculiar inherent defects, which render it unfavourable to the governed, in the hands of tyrannical, ambitious, ignorant, or unconscientious men. Thus mankind have found that monarchy, although founded on the purest principle of paternity, will, when uncontrolled, aspire to despotism ; that aristocracy, instead of continuing, in hereditary descent, to be the government of the wisest and best men, will pass into oligarchy, or the tyranny of a few ; whilst democracy is exposed to two opposite dangers ;—that of degenerating to be the government of the lowest and most ignorant of the people (termed by jurists an ochlocracy) ; or of yielding to the ambition of demagogues, who delude or coerce the people, obtain the honours of the republic, and end in securing for themselves despotic power.

¹ Locke on Government, *passim*.

The defects of these simple forms of government led the jurists of antiquity to desire and consider of other systems ; and it is remarkable that Cicero and Tacitus, through their own powers of reflection, perceived that a government in which the three simple forms are combined, is theoretically the best.

"In my judgment," wrote Cicero, "that is the best constituted form of government which in moderation is compounded of these three constituent parts,—the royal, the aristocratical, and the popular."¹

"If we consider," observed Tacitus, "the nature of civil government, we shall find that in all nations the supreme authority is vested either in the people, the nobles, or a single ruler. A constitution compounded of these three simple forms may in theory be beautiful, but can never exist in fact ; or, if it should, it will be but of short duration."²

The beautiful theory which Tacitus thought impracticable, has been realized, whilst his prediction has proved erroneous. A constitution compounded of the three simple forms has long existed, and continues to confer freedom and happiness on the people, in the English government by king, lords, and commons.

It may be asked why the combination of the three simple forms was considered likely to be exempt from the evils found inseparable from each alone. It is obviously an advantage to obtain, for any system of government, the approval and acquiescence of the people subject to its jurisdiction ; but when, by a long course of prosperity, distinctions founded on wealth and social influence, and transmitted by hereditary descent, have divided the people into ranks or classes, which may be termed aristocratic and democratic,—with separate and often discordant views and in-

¹ "Statuo esse optime constitutam rempublicam quæ ex tribus generibus illis, regali, optimo, et populari, modice confusa." (Cic. Fragm.)

² "Nam cunctas nationes et urbes populus, aut primores, aut singuli, regunt : delecta ex his et constituta reipublicæ forma, laudari facilius, quam evenire, vel, si evenit, haud diuturna esse potest." (Tac. Ann. iv.)

terests,—their concurrence, although desirable, is not easily obtained. Their co-operation might be secured and applied by admitting these classes, severally, to some participation in the government; but the simple forms, each founded on a despotic theory, do not recognize any but the depositaries of the supreme power, as entitled to any share of it. Thus monarchy retains the entire power in itself, unshared by any portion of the people; aristocracy excludes the popular majority; and democracy, treating the people as all equal, confers no distinction upon the wealthy, well-born, learned, or otherwise socially distinguished minority.

It is the merit of the English constitution to combine, with monarchy as its basis, institutions which admit both the aristocratic and democratic classes to a share in the supreme power of the State; and to have so constituted and regulated these institutions in relation to the monarchy and to each other, that in the event of either of them striving for undue ascendancy, it becomes the interest and the duty of the others to operate as checks, and to obstruct the attempt. The establishment of these several institutions has admitted, also, of a separation of the executive from the legislative functions of the government, which, in the simple forms are, from necessity, placed in the same individual or body, or its subordinates. It will be perceived, when tracing the rise and growth of the institutions which embody these elementary principles in the English constitution, how the freedom of the people increased and strengthened, as the legislative functions gradually passed out of the monarchical to the aristocratic and democratic, or popular, branches of the government; and more especially as the right of originating laws for the taxation of the people, settled in the latter; the executive power retaining only a consenting or negative voice in legislation.

The original sources of information for the proposed inquiry are, chiefly, our national records and our public laws. Of the former, the charters of the kings and the records of Parliament—that is to say, its writs of summons and re-

turns, its petitions, with their answers, the rolls of Parliament, the journals of the two Houses—are most connected with our inquiry; but besides these, we may refer to the State trials, and to the records of the courts of justice, and of other departments of the government. Many of these records have been printed and published at the national expense; and they have been rendered still more available for the use of modern historians, by the indefatigable labours of learned antiquaries and commentators. From these, aided, where defective from incompleteness or loss, by the works of contemporary chroniclers, historians have been enabled to trace out the rise and growth of the Parliament;—first, as a single aristocratic body, acting as a council to the king; next, as receiving the addition of representatives of the people;—its separation into two Houses;—and finally, the means by which the two Houses acquired their distinct action, and their several functions, privileges, and modes of procedure, which now produce free legislation, and a just control of the executive power.

The changes above indicated were gradual, often unforeseen, and the result sometimes rather of accident than of express design. But the history of the freedom and of the political rights of the people, is the history of our laws.¹ The changes which produced their liberties could only be made, as their liberties could only be rendered secure, by statutes. Statutes, therefore, which we may call constitutional,—that have enlarged the freedom of the people by limiting or terminating the power of their rulers or aggressors, or by conferring upon the former personal or political rights,—will require especial notice. Nor are they meagre in historic information; for they oftentimes exhibit in their introductions or preambles, the abuses, oppressions, or other circumstances which were the motives or occasions of the laws they ordained.

¹ "The history of the law affords the most satisfactory clue to the political history of England." (Sir Francis Palgrave's *History of the English Commonwealth*, vol. i. p. 8.)

But if we would trace, however briefly, the history of our constitution, we must be prepared to take a long retrospect. Its foundations stretch far back to remote times, and the present lofty structure was raised by a continuous although slow accretion. We may, however, reconcile ourselves to the labour which the study occasions, by the assurance that, unless we make ourselves acquainted with the great principles upon which our ancestors acted when they framed the several parts of the constitution, we shall be but ill qualified to decide upon a constitutional course of action in difficult and anxious circumstances; and that such knowledge can alone inspire us with that genuine admiration of our constitution, which all must feel who know how it was fought for and won.

CHAPTER II.

THE ANGLO-SAXONS.

Saxon Spirit of Liberty.—Settlement of Saxons in Britain.—Their Ancestors, the Germans.—Their Institutions, described by Tacitus,—compared with present Institutions.—England one Kingdom.—Anglo-Saxon King.—Wittena-Gemote.—Saxon People.—Religious Institutions. — Compurgators. — Shires. — Courts of Justice. — Hundreds, Burghs, and Burgesses.—Court Leet.—Trial by Jury.—Saxon Laws. —Review of Saxon Institutions.

THE ancient jurists, although they perceived that advantage would arise from the union of the three simple forms of government, had conceived no idea of the mode in which they have since been so successfully united. Nor was our mixed government, as before observed, formed upon an originally complete plan or system. It is the combined result of many separate events and circumstances in our national career, spread over a long period of time; the consequences of which were often not foreseen, either by the actors themselves, or by the generations in which they lived. Its growth and establishment were greatly fostered, if not mainly caused, by the spirit of liberty, the love of order, and the jealousy and disdain of arbitrary power, which have always distinguished the English people of all ranks, even when obliged to submit for a time to the pressure of tyranny. This spirit originated in the Anglo-Saxon times; and it sprang from, and was cherished by, the institutions of our Anglo-Saxon ancestors, amongst which will be found the germs of some of those existing and most valued at the present day.

But these institutions of the Anglo-Saxons, ancient as they are, may be traced back to others yet more ancient; and the principles of law and government which they established in the island, were those of the people from whom they migrated. The islands of Britain and Ireland were first gradually peopled from the adjacent continent of Gaul;¹ their first inhabitants having been Celts, of that branch of the Celtic race called Cymry; a name which their posterity still retain, in their native language, in Wales. They were subdued in the first century of the Christian era by the Romans; from whom they received the name of Britons,—from Prydain, or Britain, the country in which they were found.² Britain then became a province of Rome; and it so continued until the fifth century, when the invasion of Italy by the Goths forced the Romans to relinquish so distant a province; the Roman legions were called away; and in the reign of the Emperor Honorius, Britain was restored to the sway of its ancient race.³

The Britons, after the departure of the Roman legions, were exposed to the incursions of pirates from the coast of Germany, and of Picts and Scots from the northern part of Britain; and being unable to defend themselves against these bold and ferocious barbarians, they obtained the aid of a party of Jutes who, under Hengist and Horsa, had landed on the coast of Kent; and finding the advantage of their assistance, they invited reinforcements of the same people. Their united strength was sufficient to repel the hostile invaders; but the new allies were not content to depart when their services were performed, nor to remain as the mercenaries of the Britons. They proceeded to establish themselves as colonists in the island; and new adventurers, consisting of Saxons, Jutes, and Angli,—kindred tribes,—after successive invasions, under powerful leaders, and after wars carried on for more than a century, in which the Bri-

¹ Gibbon's *Decline and Fall of the Roman Empire*, vol. iii. ch. 25.

² Palgrave's *English Commonwealth*, ch. 1, p. 3.

³ Turner's *History of the Anglo-Saxons*, *passim*.

tons fiercely opposed their settlement in the island, succeeded in establishing there, seven different kingdoms known in history as the Saxon Heptarchy. The Britons were completely subdued. The greater and the more distinguished part of them retired into Wales and Cornwall, or emigrated into foreign countries. Those that remained became the domestics or the slaves of the conquerors; who substituted their own institutions, laws, and language, for those of the Britons. Christianity, which had been introduced in the time of the Romans, was superseded by, and succumbed to, the influence of Saxon paganism.¹

The people, whose customs and institutions were brought into Britain by their hardy sons, dwelt in that part of western Europe that lies between the Baltic and the Rhine, and in the islands of the German Ocean. They were tribes of a Gothic race, which, at the commencement of the Christian era was spread over the north and centre of Europe.² It is from these nations—the Angli, Jutes, and Saxons—that the English derive their origin; although people of several other nations, especially Danes and Normans, afterwards invaded England, settled in the country, and intermingled with the Anglo-Saxon stock. The celebrated work of Tacitus, “On the Manners of the Germans,” is a remarkable record of the institutions of these people; and from it we may obtain a glimpse of the political system, and of the independent spirit, of our progenitors.

¹ Sir F. Palgrave considers these illustrious names of Hengist and Horsa as fabulous (*English Commonwealth*, vol. i. p. 396); but they have a real existence in the ‘*Saxon Chronicle*,’ where it is said that they were invited by Wutgern, King of the Britons, to support the Britons; but they afterwards fought against them. The King directed them to fight against the Piets, and they did so, and obtained the victory wherever they came. They then sent to the Angles, and desired them to send more assistance. They described the worthlessness of the Britons, and the richness of the land. They then sent them greater support. Then came the men from three powers of Germany, the old Saxons, the Angles, and the Jutes.” (*Saxon Chronicle*, Ingram’s edition, 1823, p. 14.)

² Turner’s *History of the Anglo-Saxons*, vol. i. p. 86.

“The kings in Germany owed their election to the nobility of their birth. Their power was not arbitrary or unlimited. The chiefs were selected for their valour; and when admired for their bravery they were sure to be obeyed. In matters of inferior moment the chiefs decided; but important questions were reserved for the whole community, where all had a voice. The general assembly was summoned at stated periods; but their passion for liberty disdained compulsory attendance. They did not assemble for two or three days after the appointed time. Regularity would look like obedience, and by delay they marked their independence. Each man took his seat completely armed. Silence being proclaimed by the priests, the king opened the debate; the rest were heard in their turn, according to age, nobility of descent, renown in war, or fame for eloquence. No man dictated to the assembly; any might persuade, but none could command.

“In this council of state, accusations were exhibited and capital offences prosecuted. Pains and penalties were proportioned to the nature of the crime. For treason and desertion the sentence was, to be hanged on a tree. He who was convicted of transgressions of an inferior nature, paid a mulct of horses or of cattle. Part of this fine went to the king or the community, and part to the person injured, or his family. It was at these assemblies that the king was chosen, and chiefs elected to act as magistrates in the several cantons of the State. To each of these judicial officers, assistants were appointed from the body of the people, to the number of a hundred; who attended to give their advice and strengthen the hands of justice.¹

If it should be considered fanciful to trace our constitution to an origin so remote, it must needs be admitted that in this account of the ancient Germans, we discover much of the genius and spirit of our present matured institutions,—a king with limited power, a body of chiefs or nobles, and a popular assembly having authority over all

¹ Abridged from Tacitus, ‘*De Moribus Germanorum*,’ Murphy’s translation, ss. 7, 11, 12.

important affairs; the judicial power entrusted to magistrates appointed by the general assembly; and principles and modes of punishment in which we may recognize the features of our present penal system.¹

Egbert, King of Wessex, succeeded in making the other kingdoms of the Heptarchy subordinate to his own. But, according to modern historians, it was not until the reign of Athelstan that the distinctions of the Heptarchy were abolished. In his reign, however, if not before, the kingdoms of the Heptarchy were united under one government; and the country received the name, and the sovereign the title of King, of England.²

The scope of our plan neither requires nor admits of much attention to Anglo-Saxon lore; and no more will be attempted than to show the existence of institutions, civil and religious, which have some analogy to our own; or which have been carried down, modified by time and circumstances, to the present day. Even these cannot be described with more than conjectural accuracy, so complicated and uncertain is Anglo-Saxon constitutional history.³

¹ Sir F. Palgrave observes, that "the statement of Tacitus must be considered only as a general outline of the institutions of the barbarians, derived from report and hearsay, and adorned by imagination and eloquence." (English Commonwealth, vol. i. p. 87.) But Montesquieu and Blackstone refer the origin of the constitution to the German institutions. "In the treatise on the Manners of the Germans, an attentive reader may trace the origin of the British constitution. That beautiful system was found in the forests of Germany." (Spirit of Laws, vol. xi. 6.) "These originals [of our laws] should be traced to their fountains, as well as our distance will permit; to the customs of the Britons and Germans, as recorded by Cæsar and Tacitus." (Blackstone's Commentaries on the Laws of England, vol. i. p. 35.) Mr. Hallam throws no doubt on the accuracy of Tacitus' description of the ancient Germans; "although (in reference to Gaul) after the lapse of four centuries between the ages of Tacitus and Clovis, some change may have been wrought, yet the foundations of their political system were unshaken." (Middle Ages, 8th edit. vol. ii. p. 97.)

² Turner's History, vol. i. p. 422.

³ Sir F. Palgrave, in his learned and laborious work, observes that,

The chief authority was in the Cyning, or King. Like the German king described by Tacitus, his power was not arbitrary or unlimited; nor was hereditary succession so established as not occasionally to give way to expediency. In times like those, when the country as well as the throne had to be defended by personal prowess, or by unwearying vigilance, the government could not safely be committed to a child or incapable heir; and there are many instances in Anglo-Saxon history, of hereditary right being set aside in favour of a more competent successor. The great king Alfred did not obtain his throne by hereditary succession. He founded his title on the will of his father, and the consent of his elder brother, but more especially upon the consent of a large proportion of the people of the kingdom of Wessex.¹ But the royal authority was never allowed to be separated from the royal race; no subject could aspire to the sovereign rank.²

The pervading principle of the Anglo-Saxon government was Aristocracy. The Anglo-Saxons, like their German ancestors, controlled the power of their king by a council of their chiefs or nobles, called the WITTENA-GEMOTE, or meeting of wise men. No authentic documents exist from which any certain information can be obtained concerning the constituent elements of the Saxon council;³ but it is generally supposed to have consisted of the Abbots and

“in investigating the constitutional history of the Anglo-Saxons we are involved in perplexity.” “No labour or sagacity can entirely unravel its enigmas.” (English Commonwealth, pp. 60, 61.) To its general value, however, Lord Campbell testifies:—“It has been too much the fashion to neglect our history and antiquities prior to the Norman Conquest. But to our Anglo-Saxon ancestors not only are we indebted for our language, and for the foundation of almost all the towns and villages in England, but for our political institutions; and to them we may trace the origin of whatever has most benefited and distinguished us as a nation.” (Lives of the Lord Chancellors, 4th edit. vol. i. p. 29.)

¹ Spelman, *Vita Alfredi*, Appendix.

² Palgrave's *Commonwealth*, vol. i. p. 10.

³ Reports from the Lords' Committees touching the Dignity of a

Bishops, and of the Eorldermen, (after the Conquest, called Earls),—dignitaries who had the official custody of the shires, under the Crown,—and of the Thanes, or nobility. It was convened by the king, who presided over it. Its highest duty was, to elect the sovereign when a vacancy occurred, and to assist at his coronation. It also advised and assisted the king in making the laws, and in all the main acts of his government. It had also duties of a judicial kind, being to the whole nation what the shire-mote, or court, was to the shire. After the union of the Hephtharchy, King Alfred ordained that the Wittena-Gemote (or Witan, as it was briefly called) should “meet twice a year, or oftener if need be, to speak their minds for the guiding of the people, how to keep from offences, live in quiet, and have right done to them by ascertained usages and sound judgment.”

The Saxon people were divided into three ranks, of Eorls, Ceorls, and Theowes; terms indicating the noble, the free, and the slaves.¹ The Eorls were distinguished as King’s Thanes, and middle and inferior Thanes; the former were the nobility, the latter were the gentry of the nation. The Ceorls were husbandmen, and the cultivators of the Thanes’ lands. They were of the same station as the Villani, or Villains of later times,² agricultural tenants, not permitted to depart from the land which they held; but not liable to be removed, so long as they performed the services which were the condition of their tenure.³ They were, although

Peer of the Realm, vol. i. p. 15. The author expresses his grateful acknowledgments for the assistance he has derived from the collection of ancient documents analyzed and commented upon, in these learned Reports. (Hume’s History of England, vol. i., Appendix.)

¹ Hume’s History, vol. i., Appendix.

² Palgrave’s English Commonwealth, vol. i. p. 9. Hallam’s Middle Ages, vol. ii. p. 67.

³ Sir H. Spelman says, that “ceorls were of two sorts; one, that hired the lord’s *outland*, or tenementary land (called also the *folc-land*), like our farmers; the other, that tilled and manured his *inland* or demesnes;

ignoble, freemen,¹ and they must have possessed the power, under some circumstances, of disengaging themselves from the pursuit of husbandry; for if a ceorl throve, so that he became the owner of five hides of land, of a church, and of some other smaller possessions; or if he made three voyages beyond sea, in a ship, and with a cargo of his own, he was advanced to the dignity of a Thane.² The Theowes, or serfs, are supposed to have been the descendants of the conquered Britons. They were destitute of all political rights, and entirely the property of their masters. Some of these performed servile labour on the lands to which they were annexed, and were passed as slaves with such lands from one owner to another. Others were domestic slaves, employed in the houses and families of their lords; but notwithstanding their degraded condition, all these were under the protection of the law, or, as it was called, law-worthy. The *Were-geld*, or compensation in money, included all ranks: it was paid, in lieu of punishment and revenge, to the relatives of a person slain under circumstances which now constitute manslaughter; the price of blood ascending in amount with the rank of the slain, from the theowe, the lowest, to the eorl, the highest in the social scale. But murder, treason, military desertion, and theft, were inexpiable, and punished with death.³ To keep crime in check, the people were yielding work, not rent, and was therefore called his socmen or ploughmen: these were oftentimes his very bondsmen." (Spelman on the Ancient Government of England.)

¹ "Every freeman was either noble or ignoble." (Palgrave's Commonwealth, p. 12.)

² Kelham's Domesday Book Illustrated, p. 345. Also Pennant's London, p. 13, who says,—“Our commerce by sea was not very extensive; our wise monarch Athelstan being obliged, for the encouragement of navigation, to promise patents of nobility to every merchant who should, on his own bottom, make three voyages to the Mediterranean.”

³ Palgrave's Commonwealth, vol. i. p. 204. “There is no clear proof that the Saxons distinguished between manslaughter and murder.” (Littleton's Henry II., vol. iii. p. 228. Hallam's Middle Ages, vol. ii. p. 60.) In referring to the works of Mr. Hallam, I acknowledge with gratitude my obligations to him, as the great pioneer in Constitutional

under a system of oversight. Every man must be under the patronage of a lord. No man could leave his shire, without the Eorldeorman's permission. A stranger could not be entertained for more than two nights, without the host, on the third, becoming responsible for his conduct.¹

Amongst the Anglo-Saxon institutions there was an ecclesiastical hierarchy of Archbishops, Bishops, and inferior Clergy. Christianity, which had been suppressed by the first Saxon invaders, was restored by St. Augustine, who was sent by Pope Gregory from Rome to England, in the latter end of the sixth century, during the reign of Ethelbert. Through the influence of Adelberga, the Queen, who had secretly embraced Christianity, Augustine obtained royal grants of the ancient churches that had been consecrated to Christianity in the time of the Romans; and the King, becoming a convert and receiving baptism, invested him with authority over the infant Church, by appointing him Archbishop of Canterbury. The power of the Pope was thus extended over the Saxon kingdom. Cathedrals, monasteries, and churches were raised and endowed,² and a parochial clergy gradually arose; the Thanes being encouraged to erect churches on their lands, and to endow them with tithes.³ But the Saxon clergy did not obtain those privileges and immunities by which, in later times, the En-

History. I hardly know which is most worthy of admiration, his learning and research, or the spirit of liberty which pervades and animates his works, and which often displays itself in fine bursts of eloquence.

¹ Saxon Laws, Hallam's Middle Ages, vol. ii. p. 80.

² "A.D. 596.—This year Pope Gregory sent Augustine to Britain with very many monks, to preach the Word of God to the English people." (Saxon Chronicle, p. 28.)

"A.D. 616.—This year died Ethelbert, King of Kent, the first of English kings that received baptism." (*Idem*, p. 34.)

³ The statutes of Edgar and Canute allowed a thane to endow a church with one-third of the tithes, if a burial-ground were annexed thereto; if not, the tithes were to be paid to the Mother Church. (Palgrave's Commonwealth, vol. i. p. 162.)

glish clergy separated themselves from the laity. The clerk and the layman were governed by the same laws, and subject to the same judicial tribunals. The clergy, however, enjoyed unbounded reverence and respect. The bishops were appointed by the king; they had equal dignity in the State with the eorls; and one distinction they enjoyed above the eorls, and in common with the king alone,—that a bishop's testimony in a court of justice was conclusive, without the corroboration of compurgators. The Anglo-Saxon law required, in the case of all other ranks of the people, if accused of crime, that they should, in the absence of direct testimony, produce compurgators to support their declaration of innocence. These consisted of twelve friends and neighbours of the accused, who vouched, by their own oaths, their belief in his.¹

The kingdom was divided into Shires, a work frequently attributed to King Alfred, but known to have been of more ancient date.² These were again subdivided into Lathes, Rapes, Hundreds (or Wapentakes, as the Hundreds were called north of the Trent), Burghs, Townships, and Tythings. The shires were under the government of an Eorl-derman,—not a degree of dignity, or of the tenure of land, but of office or judicature, extending over a shire, or other portion of the country conterminous with the bishopric. In process of time he acquired the government of the chief city and castle of the territory; and with it the third part of the king's profits, arising from his courts of justice; but the office was held at the pleasure of the king, and was not hereditary.³ Every shire had its Gerefa, or Shire-reeve. Two general courts were held every year in each shire, over which the bishop and eorl-derman presided; and declared, respectively, the ecclesiastical and municipal law. These courts had jurisdiction in criminal matters, or those against the king's peace. The sheriff appears to have

¹ Palgrave's Commonwealth, chapters v. and vii., *passim*.

² Sir Edward Coke says that Alfred restored them (Co. Litt. 168).

³ Sir H. Spelman on Feuds, cap. 6.

presided over them in the absence of the bishop and eorlde-
man; and, in course of time, the judicial authority fell exclu-
sively into his hands. For we find that the sheriff held two
several courts of distinct natures, one called his Tourn, " be-
cause he keepeth his tourn circuit about the shire, and hold-
eth the same court in several places, to inquire of all offences
perpetrated against the common law. That court was held
twice in the year. The other court was called the County
Court, which exercised jurisdiction in civil cases ;" restrained
(but probably at a much later period) to cases under forty
shillings, arising within the county.¹

The proceedings of the Anglo-Saxon courts were oral ;
legal records did not exist.² At the Shire-court transfers
of land were made public, in order that they might be noted
by the landowners who attended the court. Yet it seems
that grants of land were made by charters ; but these were
preceded by actual possession delivered of the land, by the
symbol of a turf taken from the land, and placed in the
hands of the grantee, or on the altar of the church.³ This
custom of delivering possession on the land, descended to
modern times ; being adopted, under certain circumstances,
in aid of the written conveyance.⁴

The Hundred also had its court, held once a month. It
was attended by the bishop, but presided over by the
eorlde-
man. The thanes and landlords of the hundred

¹ The description of the sheriff's tourn and shire court (called County Court after the Conquest) is from 'Cases of Treason,' etc., by Sir Francis Bacon (Harleian Miscellany, vol. v. p. 2). Mr. Hallam cannot pretend to determine when the sheriff's tourn arose. He says that the sheriff presided in the county court in the absence of the bishop and eorlde-
man. (Middle Ages, vol. ii. p. 72.)

² Palgrave's Commonwealth, vol. i. p. 143.

³ *Idem*, vol. i. p. 141.

⁴ Sir H. Spelman observes, "that when they sold or gave land abso-
lutely, they did it usually without deed ; but where they gave it in a
special manner, as with a limitation of time, heirs, or how it should be
employed, they did it in writing. The former they called folkland ;
either for that the assurance of them rested in the testimony of the folke

here completed their transactions respecting their lands; and received and paid their purchase-moneys, in the presence of the hundredors; who, if required, afterwards bore testimony to the fact in the shire.¹ The Saxon Burgh was a hundred, or collection of hundreds, surrounded by a moat or wall. The burghs were under the presidency of a Portreeve, and when their extent rendered it necessary, they were divided into wards. The inhabitants, or as they were called, the resiants, who paid scot and bore lot,—who bore the burdens of the burgh and did its public work,—became the Burgesses, who were sworn and enrolled in the Court of the Borough, or Court Leet. These did not depend upon tenure, but residence.² Townships were the domains which surrounded the dwellings of the thanes, analogous to the manors, in Norman times.³ In each township or manor was held, once a year, the Court Leet, or View of Frankpledge. This court regulated the pledges of the freemen, for the good conduct of each other. Every freeman above twelve years of age, was required to be enrolled in some tything, where, in numbers of ten, they became bail for each other, and under a pledge to produce any one of their number who should be guilty of crime. In case of his flight, and of his property being deficient, the tything became responsible for the penalty of the crime; unless they could prove themselves guiltless of the crime or escape.⁴

Trial by Jury has been ranked as of Anglo-Saxon origin, and the honour of its invention given to King Alfred; but

or people; or that they might be alienated to all folke without impediment; the other, called Bokeland, being not disposable, but according to the tenour of the writing, which they called a boke or land-boke." (Spelman on Ancient Deeds and Charters.)

¹ Palgrave's Commonwealth, vol. i. p. 101.

² History of Boroughs and Municipal Corporations, by H. A. Merewether, Serjeant-at-law; introduction, xii.

³ Palgrave's Commonwealth, vol. i. p. 141.

⁴ Hallam's Middle Ages, vol. ii. p. 82. These Courts Leet and View of Frankpledge are still held as manorial courts. The Frankpledge is, of course, but a name.

more perfect investigation of Anglo-Saxon lore has proved that this invaluable institution was not introduced until after the Conquest. In the administration of justice in the Anglo-Saxon courts, it was usual to require the landowners and people of the vicinity, to assist in the discovery and punishment of crime. Twelve thanes were chosen in every wapentake, to present the crimes committed in the district; twelve compurgators confirmed the oath of innocence, of an accused person. But the proceeding of the twelve thanes was an accusation, not a trial; the compurgators were the *ex parte* supporters of the accused; and the Saxon inquests, which bear the nearest resemblance to the modern jury, were the witnesses, and not the triers of the facts. It is probable, however, that the number of the jury, when trial by jury was afterwards constituted, was fixed in reference to the old Anglo-Saxon preference for the number of twelve.¹

Amongst the Saxon laws those of King Edward the Confessor were much prized; and their disuse after the Conquest was greatly regretted by the Saxon people. These laws were, however, ordained by King Canute; and were only confirmed by King Edward on his accession to the throne.²

When we review these ancient Saxon institutions, we find the government to be monarchical, but strongly controlled by the aristocracy of the Wittena-Gemote, and of the eorls and higher nobility. The people had no direct political power; but they were not rigidly excluded from it, the institutions permitting them to ascend to the rank of nobility, by means within the reach of successful industry at home, or adventurous trade abroad. A large proportion of the people

¹ Mr. Hallam has produced the evidence that bears upon this question, and expressed his opinion that it does not warrant us to infer the existence of trial by jury. (Middle Ages, vol. ii. p. 76.) Sir F. Palgrave has treated the subject at large, with the same conclusion, in his History, ch. 8.

² Palgrave's Commonwealth, vol. i. p. 48.

were freemen; and there were various methods by which even the serfs could obtain their freedom.¹ But in the later Saxon times the aristocratic was the most powerful element. In the reign of Edward the Confessor the whole kingdom was under the sway of five eorls; three of whom were Godwin, and his sons Harold and Tostig.²

The language spoken and written was the Saxon, a branch of the Teutonic. Poetry and literature were cultivated, and flourished to a considerable extent.

¹ Merewether on Boroughs, vol. i., introd.

² Hallam's Middle Ages, vol. ii. p. 65.

CHAPTER III.

THE CONQUEST AND THE FEUDAL SYSTEM.

WILLIAM THE CONQUEROR.—1066–1087.

The Conquest.—Confiscation of Saxon Estates.—Apportionment of them amongst the Conqueror's followers.—Feudal System introduced ; its Object and Principles.—Feudal Investiture and Oath.—Feudal Services.—Land granted to the Church.—Origin of the Barons.—Subinfeudation.—Vavasours.—Feudal Incidents.—Aids, Relief, Primer Seisin.—Wardship.—Fines on Alienation.—Relief.—Tenure by Serjeanty ; in Socage.—Copyholds.—Burgage Tenure.—Domesday Book.—Tallage or Taxation.—Feudal Councils.—State of the Kingdom.—Language.

WE now pass to the overthrow of the Saxon dynasty and institutions, through the conquest of England, by William, Duke of Normandy, in 1066. On the death of Edward the Confessor, Harold, son of Godwin, supported by the influence of that powerful earl, seized the throne as the successor of Edward ; taking advantage of the weakness of the infant heir, Edgar Atheling. William claimed the throne as the appointed heir of the Confessor ; and treating Harold as a usurper and his adherents as rebels, he invaded the island with 60,000 Normans and adventurers. Harold was killed at the battle of Hastings, on the 14th of October, 1066 ; and William became master of the kingdom. But although a conqueror by battle, he professed to reign by virtue of his alleged title as the successor appointed by Edward ; and he was crowned by the Saxon Archbishop, and took the coronation oath of the Saxon kings, on Christmas-day, 1066. By this conquest, monarchy was put in the ascendant ; and a

new population, a new language, and a new political system were introduced.

A large number of the Saxon nobles fell in the battle, and their estates were immediately confiscated by William. Some who survived and made their submission, were allowed to retain their properties; but afterwards joining in insurrection, they were deprived of them; so that before the close of William's reign, nearly all the land of the kingdom had passed into his power. The people at first struggled to retain their freedom, and their Saxon institutions and laws, which they greatly cherished; but, deprived of the leadership and support of the ancient nobility, their attempts were unsuccessful, and they gradually sank into a state of poverty and bondage.

The acquisition of the lands of England was one of the chief motives of the followers of William to assist him in the invasion of the island; and when the conquest was complete, he lost no time in giving them the expected booty. The King appropriated to himself, as the demesnes of the Crown, 1422 large properties or manors in different shires, besides other scattered lands and farms. Amongst these were the lands of the Saxon kings and great thanes; of Edward the Confessor, Harold, Earl Godwin, Ghida, the mother of Harold, and Editha, the Confessor's Queen. The lands of other Saxon nobles he divided amongst his chieftains, apparently according to their rank in Normandy; or in proportion to the number of their followers, or to the supplies they had furnished to the expedition.¹ But it is observable that most of the larger grants were of lands in different parts of the kingdom; so that too much power or influence might not be obtained by any chief, through the possession of large properties in one place. If that rule were departed from, the lands were generally on the borders of Wales or in the North, where the chieftain would have to defend his possessions against neighbouring or foreign foes. Some of the Conqueror's chieftains acquired estates

¹ Kelham's Domesday Book Illustrated, p. 440.

by marriage with the heiresses of ancient Saxon families; their titles being probably confirmed by grants from the Conqueror.¹

But William did not long allow his chiefs to enjoy their new possessions free from his control; and to unite their interests with his, and secure their assistance in war and their counsel in peace, he introduced into the country the FEUDAL SYSTEM. This system was at that time established in Normandy, and in other parts of Europe; where it had its origin in the policy of the barbarians, who spread themselves over the continent at the decline of the Roman Empire. It has been a question of learned controversy, whether or not the feudal system existed in England amongst the Saxons; but the best authorities hold that it was first introduced into England by the Conqueror.² It was the most important of all the changes introduced by William; and it has greatly influenced the formation of our present system of government. From it flowed (as will hereafter appear) our Parliament; almost directly the aristocratic, and scarcely less so the representative, branch of it. It lies at the foundation of our law of landed property. The law of primogeniture was its necessary consequence. Notwithstanding its oppressions, it maintained its hold until abolished by statute in the reign of Charles II. It is obvious, therefore, that the nature and principles of our constitution cannot be understood, without an acquaintance with, at least, the outlines of that celebrated system.

The object of the feudal system was to create that mutual relation between the king and his chiefs, which would ensure the defence of his kingdom, and the power of the king. It attached all importance to land, which was then the only wealth. Its leading principle was, that the king is the

¹ Sir Henry Ellis's Introduction to Domesday Book, vol. i. p. viii. Peers' Report, vol. i. p. 24.

² Spelman on Feuds, cap. 3, p. 7. See Hallam's Middle Ages, vol. ii. pp. 89-96.

paramount lord of all the lands of the kingdom ; and that all proprietors hold their lands directly or indirectly (in feudal phrase, *mediately* or *immediately*) of the king. The Conqueror, on his first division of the land amongst his followers, did not grant it on feudal tenure: it was, at first, given as *allodial*, or free from any superior or burden ; and it was not until the latter end of William's reign, after an alarm of an expected invasion from Denmark had passed away, that he induced his chiefs to provide for the defence of the kingdom, by holding their lands as feudatories. In the nineteenth year of his reign, William and the great land-owners met at Sarum ; where the latter voluntarily surrendered their estates to the King, and received them back from him, to be held by the tenure of KNIGHT-SERVICE, or CHIVALRY.¹

The feudal relation was instituted by a symbolical delivery of the possession of the land by the king, as feudal lord, to the grantee, or vassal, in the presence of other vassals. This was called *livery of seisin* ; and it was followed by a remarkable ceremony, that, according to modern ideas, would perhaps be considered humiliating, both in posture and language. It was called *homage* ; and so called from its being the profession by the vassal that he was the king's *man*, from the Norman words used in the ceremony, "*Je deveigne votre homme*,"—I become your man. The vassal (or tenant, as he was usually called, after homage, by reason of his *holding* the land) was ungirt of his sword, and his head was uncovered. The king sat, and the vassal knelt before him, on both his knees ; holding his hands together, between the hands of the king. In that position, the vassal

¹ "A.D. 1086.—This year the King bare his crown and held his court in Winchester, at Easter. Afterwards he was at Sarum, in Lammas, where he was met by his councillors ; and all the landsmen that were of any account over all England became this man's vassals as they were ; and they all bowed themselves before him, and became his men, and swore him oaths of allegiance that they would against all other men be faithful to him." (Saxon Chronicle, p. 290.)

pronounced these words in Norman-French: "I become your man from this day forward, of life and limb, and of earthly worship; and unto you shall be true and faithful and bear to you faith for the tenements I claim to hold of you." The king then kissed the vassal on the cheek, and the vassal took the oath of fealty. "Hear this, my lord, I will be faithful and loyal to you, and will bear to you faith for the tenements I hold of you; and will loyally perform the customs and services which I owe to you, at the times assigned. So help me God and His Saints."¹

The services which were reserved by the king, and which the tenant was to render to him, were twofold,—to follow, or do *suit*² to him in his court in time of peace, and to attend him in war, if called upon. This tenure was called by the various names of Tenure in Chivalry, Military Tenure, and Knight-Service. Each portion of the land granted, that was equal in value to the sum of twenty pounds a year, (estimated, according to some authorities, by a fixed invariable quantity, according to others by its quality only³) constituted a Knight's-Fee; and for each knight's-fee the tenant was bound to render a knight completely armed and accoutred for war, with attendants and horses, to serve forty days in the year.

The Conqueror also appropriated large quantities of land to the CHURCH; but no distinction was made in favour of ecclesiastical property. The land was held by military service, and charged with the render of knights and men, which it was the duty of the abbots and bishops to provide.

The holders of lands by military service, directly of the king, owned no superior but the king: they were called the king's tenants *in capite*, or *in chief*; and, from the words in the act of homage, by which each declared himself to be the *man*, *l'homme*, or (in law Latin) *baro*, of the king, they ac-

¹ Littleton, 64.

² A derivative from *suirre*, to follow,—hence 'suitors.'

³ Selden's Letters of Honour, p. 622; Sir H. Ellis, i. 146, and authorities there cited.

quired the appellation of *Barones*, or barons; and their lands were, in feudal phrase, held *per baroniam*.¹ Their large possessions gave them great power and influence; and the exclusive right which they enjoyed of attending the court or council of the king, and of being consulted in his affairs, soon distinguished them into a separate class. The barons thus became a great military aristocracy, whose nobility descended with their estates to their eldest son, charged with the render of the military services by which the estates were held. They took rank after the bishops and abbots; and baron was the only title of nobility until the reign of Edward III., except that of earl, which continued, as in the Saxon times, an official dignity connected with the counties.² They were called *Pares*, or Peers, as they were equal to one another, and all of them liegemen to their chief lord the king.³

In foreign countries, when the feudal system was first introduced, the lands,—or, as they were called after homage performed, the fiefs,—were not granted for any certain or definite time; neither were they transmissible to the descendants of the vassal, nor had he power to alienate them. But William gave it a more monarchical character than it elsewhere had, by the regulations he made for subinfeudation. He permitted his tenants *in capite* to institute between themselves and their followers or dependants, a relation similar to that which existed between the king and themselves. They rewarded their captains and followers, who had fought under their banners, with portions of the land granted to them by the king. They, like the Conque-

¹ It is uncertain in what respect tenure *per baroniam*, although frequently mentioned in ancient documents, differed from knight-service. Littleton (who lived in the reign of Henry VI.) in his Treatise of Tenures, speaks of tenure by knight-service, and grand serjeanty, but he does not mention tenure by barony; nor is it mentioned in the Act 12 Car. II. c. 24, which abolished the feudal tenures. (Peers' Report, Div. 3, p. 69.)

² Ellis, on Domesday Book, p. 44.

³ Madox's History of the Exchequer, vol. i. p. 4.

ror, divided their territories into two parts; one of which they retained for their own demesnes, or private property; the other they parcelled out amongst their military followers, to be held by the same service as they were liable to render to the king. This subordinate relation was called SUB-INFEUDATION. It was instituted by the same ceremony of homage as that between the king and his vassal; and the same oath of fealty was taken by the baron's vassal; but with the addition of a clause, saving his paramount fealty to the king,—“saving the faith that I owe to our sovereign lord the king.” The holders of military fiefs, thus created in subinfeudation, were called Vavasours; and these, in proportion to the knight's fees which they held, as vavasories, contributed to make up the whole number of knights and men to be rendered to the king by the superior lord.¹ Thus, as the king was lord to his tenants *in capite*, so they became lords,—in feudal language, *mesne* or middle lords,—to the followers to whom they granted their lands. The lands so held in subinfeudation under each baron or lord, became lordships or manors, in which the lord or his steward held courts-baron, and appointed constables and officers, and at which, at stated times, the tenants were bound to attend; “so that every lordship or manor became, in a subordinate degree, itself the similitude of the kingdom at large.”² The Church also granted out their lands by subinfeudation, and thus obtained the knights and men they were bound by their tenure to render to the king.

Lands held by subinfeudation were said to be held *mediately* of the king; or through the medium of the baron, or tenant *in capite*, who held *immediately* of the king. For although no act of homage passed between the lord's vassal

¹ Spelman says that the vavasour was a degree above a knight. They in like manner subdivided their lands among their socmen and military followers. (Spelman on Parliaments.)

² Gilbert's Tenures, Introduction, p. 10. Subinfeudation was stopped by the effect of the Statute, 18 Edward I., cap. 1, called the Statute of *Quia Emptores*.—No manor exists of later date than that statute.

and the king, William required from the vassal the oath of fealty or allegiance; and thus he retained an acknowledgment of allegiance which secured his power even over the immediate followers of his nobility. In this respect the policy of William was more far-sighted than that of feudal princes of the Continent, where the sub-vassals did not swear allegiance to the lord paramount; an omission that, in the course of time, rendered the great feudal dukes and princes of Burgundy and Artois, Provence and Brittany, almost independent of the Crown of France.

Besides the render of armed knights and men incident to lands held by knight-service, there were other incidents attached to the feudal relation, both between the king and his tenants *in capite*, and between the latter and their tenants. The exaction of these soon led to great oppression; and to reduce them within fixed and reasonable bounds, became one of the principal purposes of Magna Charta. They were known as—1. Aids; 2. Relief; 3. Primer-seisin; 4. Wardship; 5. Marriage; 6. Fines upon alienation; 7. Escheat.

1. *Aids* were pecuniary contributions which the tenant was bound to make on three occasions:—to ransom the person of the lord if taken prisoner; to make his eldest son a knight; and to marry his eldest daughter, by providing a suitable portion for her. 2. *Relief* was a composition or fine, payable by the heir on his coming into the possession of his land by the death of his ancestor, if he had at that time attained the age of twenty-one years. But this was chiefly applicable to the tenants of mesne (or middle) lords holding by subinfeudation; and in the case of tenants *in capite* of the king, was superseded by—3. *Primer-seisin*, which was incident to the king's tenants *in capite* only. It was the right the king had, when any of his tenants died leaving an heir of full age, to receive one year's profits of the lands, as a fine on his succession to the inheritance. But if the heir was under twenty-one being a male, or under fourteen being a female, the king or lord was entitled to,

4thly, the *Wardship* of the heir, and was called Guardian in chivalry; and until the heir, if a son, attained twenty-one, or if a daughter, sixteen, the guardian had possession of the lands, and received the rents and profits without accounting, but maintaining the heir according to his or her rank. When the heir came of age, if he was a tenant *in capite* of the Crown for a knight's-fee, he received the order of knighthood, which he was compellable to receive or to pay a fine to the king. 5. *Marriage* was the right to dispose of the infant in marriage. If the lord tendered the infant a suitable marriage and it was refused, the lord was entitled to the value of the marriage, or as much as any one would give, or a jury assess for the alliance; and if the infant married without consent, double the value of the marriage was forfeited to the lord. 6. *Fines upon alienation* were payable to the lord whenever the tenant alienated his land to another. These were payable only by the king's tenants *in capite*, who could not alienate their lands without the king's license. 7. *Escheat* was the dissolution of the tenure, and the return of the land to the lord if the tenant died without heirs, or if his blood became corrupted through the commission of treason or felony.

Besides the tenure by knight-service there was a tenure in which the lands were held immediately of the Crown, called TENURE BY SERJEANTY. This was of two sorts,—Grand Serjeanty and Petit-Serjeanty. Instead of the render of armed knights, the render for Grand-Serjeanty, which was a military tenure, was the performance of some services immediately to the king, as to carry his standard, to be his marshal or constable, his butler, chamberlain, or some great officer. The services of Petit-Serjeanty were of an inferior kind, and it was not a military tenure, but a tenure in socage.

Land held in SOCAGE comprised such of the demesnes of the Crown, or of a baron or lord, as they had granted or parted with for other considerations than those of military services, such as rents in money or in produce. It

was devoted to husbandry, and cultivated by socmen, or husbandmen, from whence it probably took its name.¹ The proprietors of these lands were freeholders; and the tenure was hereditary on the condition of paying the rent in money or in kind, reserved by the lord when the land was granted. Lands held in socage were not subject to the prerogatives of wardship, marriage, and relief, but were delivered at the death of the owner to the heir if of age, if not, to his guardians.

There were also tenants of the king's and lord's demesnes, who were merely occupiers of land; holding at will, or at most for life, or for years, but without any hereditary right. These were called villein-tenants of the lordship or manor; such as afterwards became COPYHOLDERS, or tenants by Copy of the Rolls of the Manor-Court or Court-Baron. The terms of their tenancies were recorded by the lord's steward on the roll, a copy of which, signed by the steward, was the tenant's proof of his tenancy. Copyholds in time became hereditary, subject to the performance of the customs of the manor, and payment of fines to the lord.

There were also tenants by BURGAGE-TENURE, which was a tenure in socage. These, under the names of Cives and Burgenses, were the holders of tenements in cities and boroughs, under the Crown or the lord of the borough, by certain rents or services according to the custom of the several cities or boroughs to which they belonged.² The cities and boroughs, after the Conquest, became part of the demesne of the Crown; but many of them were afterwards granted to the barons, who became lords of the boroughs.³

The adoption of the feudal system was accompanied by a

¹ Spelman, on Parliaments.

² Peers' Report, vol. i. p. 33.

³ It may be interesting to see the names of the cities and boroughs which existed at the time of the Conquest; London, Winchester, Abingdon, and a few others are not mentioned in Domesday Book, having been omitted, as is supposed, because charters of immunity had

survey of all the landed property of the kingdom. That survey was recorded in Domesday Book, the most ancient record of the kingdom, and still preserved in almost its original freshness and beauty of manuscript. It was made by order of the Conqueror, and was finished in 1086. It contains a survey or description of the lands of the kingdom,—except those of the northern counties of Northumberland, Durham, Cumberland, and Westmoreland,—with the names of the known immediate tenants, or tenants *in capite*, of the Crown, by whom the lands were held. By this survey and book an exact knowledge of the lands of the Crown was obtained. It furnished the sovereign with the means of ascertaining the military strength of the country, and of regulating the taxation. It also became authoritative on any questions that arose as to the title to lands, it being required that judgment should always be given in accordance with its contents.¹

The feudal relations thus established between the king

been granted to them, or because they had compounded for all dues and customs. The following cities and burghs are mentioned, with the services, charges, and customs to which they were liable:—(Kelham's Domesday Book Illustrated, p. 430; Ellis, vol. i. p. 190.)

Dover.	Shaftesbury.	Huntingdon.	Derby.	Norwich.
Canterbury.	Taunton.	Northampton.	Lincoln.	Yarmouth.
Romney.	Hertford.	Leicester.	Stamford.	Thetford.
Pevensey.	Buckingham.	Warwick.	Torksey.	Ipswich.
Lewes.	Oxford.	Stafford.	Grantham.	Dunwich.
Wallingford.	Worcester.	Shrewsbury.	Louth.	
Dorchester.	Pershore.	Chester.	Meldana (now	
Bridport.	Hereford.	The Wiches.	Maldon).	
Wareham.	Cambridge.	Nottingham.	Colchester.	

¹ Ellis, p. 343.—The Saxon chronicler gives a curious history of this survey:—"The King had a large meeting and very deep consultation with his council about this land, how it was occupied, and by what sort of men. Then sent he his men all over England in each shire, commissioning them to find out 'how many hundreds of hydes were in the shire, what land the king himself had, and what stock upon the lands; or what dues he ought to have by the year from the shire.' Also he commissioned them to record in writing, 'how much land

and his chiefs supplied him with men and arms, but the money and provisions necessary for war were provided by taxation of the people. The demesnes of the Crown, and the aids and reservations which flowed from the feudal lands, afforded means sufficient for ordinary occasions; but when extraordinary expense, such as that of war, was to be incurred, William possessed and exercised the power of TALLAGE, which, under the name of Taille, was incident to the feudal system on the Continent,—taxation undefined in amount, but bounded by a custom that it should be reasonable. The tenants-in-chief of the Crown were exempt from tallage, because they were bound by the tenure of their land to serve as soldiers. But all those landholders who were exempt from military service, including the tenants of the king's demesnes,—the burgage-tenants of the king's cities and boroughs,—the villein-tenants of the king,—and the holders of all lands of socage-tenure, were liable to tallage. The king also increased his revenue by levying duties on imports and exports, which were often extended by the mere power of the Crown, especially on imports and exports by foreign merchants.¹

The ancient Germans and our Saxon ancestors, as we have seen, enjoyed the right of meeting and advising their king in council; so, in all countries where the feudal system has been established, a national council, under the names of States-General, Cortez, the Grand-Assize, or Parliament, gradually arose. The Conqueror and his successors had assemblies differently constituted under the names

his archbishops had, and his diocesan bishops, and abbots, and earls; and though I may be prolix and tedious, 'what and how much each man had who was an occupier of land in England, either in land or in stock, and how much money it were worth.' So very narrowly indeed did he commission them to trace it out, that there was not a single hide, nor a yard of land, nay, moreover (it is shameful to tell, though he thought it no shame to do it,) not even an ox, nor a cow, nor a swine was there left that was not set down in his writ." (Saxon Chronicle, p. 299.)

¹ Peers' Report, vol. i. p. 26.

of *Concilium*, *Magnum Concilium*, and *Commune Concilium*. The first was the council of confidential advisers, or ministers. These consisted of the Chief Justiciar, the Constable, the Mareschal, the Steward, the Chamberlain, and the Chancellor. The Chief Justiciar was the highest in rank. He was generally a high hereditary baron, and next to the king himself, he was chief in power and authority. When the king went beyond sea the justiciar governed the realm, like a viceroy. He also presided, next to the king, in the king's chief or sovereign court of justice, called the *Aula Regis*, or *Curia Regis*. It assembled three times a year at whatever place the King held his court, at the great feasts of Easter, Whitsuntide, and Christmas, and sometimes also at Michaelmas.¹

The Great Council and Common Council were for more general purposes. In early documents after the Conquest, the persons summoned to them are described as *magnates* or *proceres*, and sometimes by the word *Barones*. Sometimes, instead of these general terms, the several ranks of the Assembly are given,—as archbishops, bishops, abbots, priors, earls, and barons. It is supposed that these Assemblies exercised certain legislative functions; but what they were, or to what extent the Assembly was permitted to control the authority of the King, the most learned inquiry has been unable to discover.²

By means of the various sources of income before described, William acquired great riches and power, and his chieftains also were enriched and ennobled. They erected castles on their demesnes, living in them as garrisons, at the same time oppressing the people and protecting themselves from their vengeance; so that, although they proved a curb to the king, they were over their vassals *quot domini, tot tyranni*.³ By the end of William's reign almost all the lands of the old Saxon proprietors had been confiscated, and them-

¹ Madox's History of the Exchequer, vol. i. p. 31.

² Peers' Report, vol. i. p. 27.

³ Chronicon de Dunstable.

selves driven out of the country, or reduced to great poverty. A large part of the Saxon population, above the state of actual slavery, were in the condition of farmers, or labourers and handicraftsmen. The city of London and almost all the principal cities and boroughs were in the hands of the king.¹ Yet there was peace and safety in the land. William, through his justiciars, or judges, exercised the sternest justice; crimes were severely punished; and the repression of outrage and crime was so complete, that it was boasted that a man could travel with gold, unprotected, throughout the land, without fear of robbery or injury.²

The Norman, or French, language was adopted for the laws and legal proceedings, and was used generally by the higher classes. The main body of the people was still Anglo-Saxon; they retained the use of the Saxon language, and they made the restoration of the laws of Edward the Confessor the chief object of their petition and desire. The Normans were, however, considerable in numbers; and with the almost exclusive possession of the landed property, and of the favour of the Conqueror, they had the chief influence in the country.³

If we test the power of the Conqueror by the theoretic principles of government, we find that his sovereignty was not absolute. His executive authority was perhaps entire, but his legislative power was restrained by the Council of Barons. If, in the plenitude of the Conqueror's sovereignty, the interposition of the Council was often merely formal, yet the principle of control was recognized; so that in this reign—perhaps the culminating point of monarchy in England, when it was least opposed by rival powers—the king did not govern absolutely and despotically; and to William might have been applied the constitutional language of Fortescue:—"A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature

¹ Peers' Report, vol. i. p. 51.

² Palgrave's Commonwealth, vol. i. p. 288.

³ *Idem*, vol. i. p. 26.

of his government is not only regal, but political; nor is his the sort of government which the civil laws point out, when they declare 'Quod principi placuit, legis habet vigorem.'" ¹

¹ Fortescue, *De Laudibus Legum Angliæ*; Lord Chief-Justice of the King's Bench, temp. Henry VI. See Hallam's *Middle Ages*, vol. ii. p. 284.

CHAPTER IV.

THE NORMAN AND FIRST PLANTAGENET KINGS.

WILLIAM RUFUS . . .	A.D. 1087, reigned 13 years.		
HENRY I.	1100	„	35 „
STEPHEN	1135	„	19 „
HENRY II., Plantagenet	1154	„	35 „
RICHARD I.	1189	„	10 „
JOHN	1199		
			<hr/> 112 „ <hr/>

Charters of Liberties.—William Rufus.—Henry I.—Charters granted by him.—No Legislative Assembly in his reign.—Stephen.—Henry II.—Separation of the Clergy from the Laity.—Constitutions of Clarendon.—New Laws.—Ireland united to the Crown of England.—Richard I.—Charters to Boroughs.—Effect of the Crusades.—Growth of National Property.

ALTHOUGH by the Conquest Monarchy was placed in the ascendant, and power little less than absolute centred in the Conqueror, yet the genius of the Saxon polity could not be repressed, and the aristocratic principle gradually assumed a controlling influence.

The moderating influence of the aristocratic class was shown by the concession of their demands, or petitions, in the form of charters from the sovereign, such charters having the name of Charters of Liberties. These were in the nature of compacts between the Crown and its immediate tenants, the barons; the Crown, on its part, granting exemption from its oppressive prerogatives, as they affected the barons, and through them subordinately favouring the body of the people. There is extant what is considered to be a copy of such a charter, issued by the authority of the

Conqueror, by which he granted that "omnes liberi homines," or the freehold tenants by military service, should hold their lands free from unjust exactions and from all tallage; and in which the existence of "the Common Council of the whole kingdom" is made apparent, for it is referred to as convened. This charter is supposed to make a distinction in the legislative acts of the sovereign,—between those which imposed charges on the people, and those which applied to the general law. In the former cases, it is supposed that the consent of the barons in council was necessary; in the latter, that the king had independent authority. In this charter the King, as a concession to the people, commanded that in addition to the laws which he had decreed, those of Edward the Confessor should be observed.¹

WILLIAM RUFUS, the second son of the Conqueror, although he obtained the throne, in 1087, against the right of his elder brother Robert, was arbitrary and tyrannical; and no trace can be found of any charter or concession to the barons or to the people, or of any legislative assembly in his reign.²

HENRY THE FIRST, the Conqueror's youngest son, seized the crown, in 1100, after the death of his brother William Rufus, and whilst his elder brother Robert was absent at the Crusades. He caused himself to be immediately crowned; and, to give validity to his title and to gain the goodwill of the people, he, after his coronation, and in the first year of his reign, issued a charter, which states that he had been crowned with the consent of the Common Council of Barons, "*Communi Concilio Baronum Regni Anglie coronatum.*" This charter makes some concessions to the Church, in regard to the enjoyment of its revenues. It then declares that "omnes malæ consuetudines," by which the kingdom had been oppressed, should be taken away. It makes con-

¹ Rymer's *Fœdera* (Record Commissioners' edition, 1816), vol. i. p. 1. Peers' Report, vol. i. p. 29.

² Peers' Report, vol. i. p. 36.

cessions to the barons, by providing that on the death of any baron who held lands of the king, the heir should redeem the land by a just and lawful relief, or payment of a fixed, in lieu of an indefinite and arbitrary sum of money; and he extended that advantage to those who held lands of the barons, in regard to the relief they were liable to pay to their lords. He also released the barons from certain money-payments and works, described by the words "gilda" and "opera;" and having thus relinquished the power of imposing such charges, he in effect surrendered the power of the Crown to impose taxes on the most opulent portion of its subjects without their consent. But the tenants of the king's demesnes were not by this charter exempted from liability to taxation by tallage; and the principal cities and boroughs, being part of his demesnes, derived from it no exemption from arbitrary taxation. There is in this charter a clause by which the king restores to the people the laws of King Edward, with such emendations as his father (the Conqueror) had made in them with the consent of his barons.¹

When the purpose of issuing this charter was served, it fell into disuse; the grievances it pretended to redress were still continued; and the royal authority, in all those particulars, was again unrestrained.² There is no proof that Henry ever convened any assembly for legislative purposes. Historians mention that the great men assembled to assist the King in his invasion of Normandy, when he defeated his brother Robert, and made him prisoner; and on another occasion, when the King required his subjects to swear allegiance to his daughter Matilda, as his successor; but there is no record or proof of any legislative assembly.³

STEPHEN acquired the crown, in 1135, on the death of Henry I., by the treachery of the clergy and barons, who had sworn allegiance to Matilda. He issued two charters in the beginning of his reign, in the first of which he founds his title

¹ Matthew Paris, p. 55. Peers' Report, vol. i. p. 38.

² Peers' Report, vol. i. p. 38.

³ Peers' Report, vol. i. p. 36.

to the throne on election : " *Dei gratiâ, assensu cleri et populi, in Regem Anglorum electus.*" The second charter contains a general confirmation of the charter of Henry. But the reign of Stephen was, almost from the beginning, a scene of tumult and trouble, and from the fourth year of his reign the accustomed assemblies of even the *Curia Regis* ceased. In such a reign it cannot be expected that constitutional law should have advanced. These disorders were at length mitigated by the convention between Stephen and Henry, Duke of Normandy, by which it was agreed that Stephen should enjoy the crown during his life, and that Henry, the son of Matilda by her second husband, Geoffrey Plantagenet, Earl of Anjou, should succeed to the throne, which, by the death of Stephen, he soon after did.¹

HENRY THE SECOND, considered as the restorer of the Saxon dynasty, ascended the throne in 1154. He was a man of great abilities ; and he made some important changes, in the general law of the realm, and in the administration of justice. But the distinguishing feature of his reign is the contest which arose between the lay and ecclesiastical powers, between the king and the clergy. The lay and ecclesiastical jurisdictions,—which under the Saxon government were peaceably combined in the same courts, where the bishop and earl sat together to administer civil and ecclesiastical justice,—had, since the Conquest, become completely separated ; and the clergy held themselves in no case amenable to any but ecclesiastical authority.² They were backed in their repudiation of lay authority by the

¹ Peers' Report, vol. i. p. 42. " Under the turbulent and miserable reign of Stephen, neither government nor law existed in England. The realm was entirely given up to violence : every powerful man built his castle, which became a den of robbers ; the towns and the open country, the clergy and the peasantry, all suffered equally from spoil and rapine ; pestilence and famine swept away the people, and the labours of agriculture were abandoned in despair. Such things (continue the Monks of Peterborough) did we suffer for nineteen years for our sins." (*Saxon Chronicle*, A.D. 1137.)

² Peers' Report, vol. i. p. 42.

power of the Pope, which was now at its height. The Popes, by their legates, presided in all ecclesiastical councils; they were appealed to in all controversies concerning religion or church discipline; and they maintained the pretended rights of the Church, against what they designated as the usurpations of kings and princes.¹

The separation of the clergy from the laity in the same commonwealth produced evil consequences, by removing from the sovereign power a large and influential body of men. Henry resolved to repress these clerical distinctions, and to bring the clergy under the law of the land; exemption from which was carried so far as to shield them from punishment for crimes, even of the deepest dye. To assist him in his scheme, he raised up the celebrated Thomas à Becket to be Archbishop of Canterbury, and Primate of England; expecting from his gratitude and his loyalty full co-operation in carrying out the design. A-Becket was the first native archbishop since the Conquest, but he was no sooner elevated to the dignity of primate, and possessed of the power and influence of that high office, than all his submissiveness ceased, and he became the chief, if not indeed finally the only opponent of the purposes of the king.² This contest produced the CONSTITUTIONS OF CLARENDON: they were made in an assembly of the archbishops, bishops, and clergy, and the earls, barons, and proceres³ of the kingdom, convened by King Henry at his palace or manor of Clarendon, in Wiltshire, in the year 1164, and the tenth year of his reign. These ordinances are sixteen in number: they are in the form of a declaration and recognition of the prerogatives of the king, which the archbishops and clergy engaged to hold and observe. So far as these ordinances

¹ Mosheim's Ecclesiastical History, vol. ii. p. 403.

² See Littleton's Henry II., vol. ii. book 3, p. 354.

³ The 'proceres regni' are supposed to include the justiciar, chancellor, justices, and other officers of the king, who appeared to have been always considered as (official) members of the Great Council. (Peers' Report, vol. i. p. 46.)

have left their traces on the constitution of the present day, they provided that all suits concerning the advowsons of churches, and all clerks accused of crime, should be prosecuted in the civil courts; and they mitigated the power of excommunication and prosecution in ecclesiastical courts, possessed by the clergy. They enacted that all appeals in spiritual cases should be carried, after their passage through the successive ecclesiastical courts, to the king; and should be carried no further, (in other words, to the Pope of Rome,) without his consent. They provided that the archbishops, bishops, and other spiritual dignitaries, should be regarded as barons of the realm, and be subjected to the duties belonging to their rank; and they were required, like other barons, to attend the Curia Regis, until the court exercising criminal jurisdiction should proceed to judgment of loss of limb, or death. They also provided that the revenue of vacant sees should belong to the king; that the chapter, or such of them as he pleased to summon, should sit in the king's chapel till they made a new election to supply a vacancy, with his consent; that the bishops elect should do homage to the Crown; that the clergy should no longer pretend to the right of enforcing payment of debts contracted by oath or promise; and should leave their lawsuits, equally with others, to the civil courts.¹

Notwithstanding Henry's subsequent difficulties with the Pope and his legates, which arose out of the murder of Thomas à Becket, he contrived to maintain the Constitutions of Clarendon in force during his life; and, with the advice or assistance of his justiciary Glanvil, he made many new laws, by which he modified or changed the Anglo-Saxon jurisprudence, and acquired the reputation of being the founder of the Common Law. He enacted severe laws against robbery, murder, false coining, and arson; and ordained that these crimes should be punished by amputation of the right foot. Pecuniary commutation for crimes

¹ Brady's History of England (1685), Appendix, p. 382. Hume's History, vol. i. ch. 8.

was thus in effect abolished; and Henry discouraged, although he did not supersede, trials by ordeal, and duel or battle, which had been introduced by the Conqueror. He admitted the accused to challenge a trial by an assize or jury of twelve freeholders.¹ He divided the kingdom into four circuits or districts, and appointed itinerant justices to travel the circuits, and to hold courts within them for the decision of suits. These justices were invested with great power and authority; they determined pleas of the crown, and common pleas, in like manner as the justices of the Curia Regis; they also assessed tallages and aids upon the king's demesnes.² To curb the oppressions of the barons, and to remove the obstacles which they opposed to the administration of justice, the King caused their castles to be demolished. He also made a very important change in military tenures, by commuting the military service of the barons for money; which, under the names of escuage, scutage, or shield-money, was levied on the baronies and knights'-fees, in lieu of the render of knights and men. He took advantage of the zeal for the Crusades to levy a tax on the movable or personal property of his subjects, nobles as well as commoners, and clergy as well as laity;—and thus laid down a precedent of equal taxation, which became a fundamental principle of the constitution.³

This prince subdued Ireland, and annexed it to the English crown, his title being confirmed by grant from the Pope. So dreaded was the power of the Pope to excommunicate princes, that even this high-spirited monarch, for the

¹ "Although Henry II. was not, in strictness, the inventor of the legal constitution which succeeded to the Anglo-Saxon polity, yet 'trial by the country' owes its stability, if not its origin, to his jurisprudence." (Palgrave's Commonwealth, vol. i. p. 243.) Lord Littleton writes, "The first introduction of trial by jury, in causes relating to the title of land, which before had been tried by duel, is ascribed to Henry II., and may well be esteemed a principal glory of his reign." (Life of Henry II., vol. iii. p. 234.)

² Madox's Exchequer, vol. i. pp. 122-125.

³ Brady's History, p. 344. Hume's History, vol. i. ch. 9.

part he took in the murder of Thomas à Becket, did penance by walking barefoot to the tomb of the "holy martyr," at Canterbury, there submitting to be whipped on his bare back by the monks. But under his temporal government England prospered: it recovered from the shock of the Norman conquest, its commerce revived, the people became more obedient to the law, and the lower orders, particularly the inhabitants of cities and boroughs, increased in wealth and importance.¹

RICHARD I., surnamed *Cœur de Lion*, succeeded his father, Henry, in 1189: he became infatuated by the Crusades, and he devoted all his power and energy to raise money for his expedition to the Holy Land. The nation was not, in his reign, benefited by any advance in constitutional government; but its prosperity was increased by the diffusion of property, as he supplied his wants, to a large extent, by the sale of crown lands, and by grants of property and privileges to many cities and boroughs. Municipal Charters began to be granted in his reign, giving the borough, often with adjacent lands, in perpetuity to the inhabitants as burgesses; and freedom from tallage or taxation in exchange for a perpetual fee-farm rent to the king or lord. These charters, however, did not incorporate the boroughs as municipal corporations, in the modern sense, of giving them a perpetual name and existence, with various legal powers; no such charter of municipal incorporation having been granted before the reign of Henry VI.;² but they produced a combination and common interest in the

¹ Peers' Report, vol. i. p. 52. Sir H. Spelman says, "But there happened about this time a notable alteration in the commonwealth: lords and owners of towns, which before manured their lands by tenants-at-will, began now to grant their estates in fee, and thereby to make a great multitude of freeholders more than had been, who, by reason of their several interests, and being not so absolutely tied to their lords as in former times, began to be of a more eminent part in the commonwealth, and more to be respected therefore in making laws to bind them and their inheritance." (Spelman on Parliaments.)

² Merewether on Boroughs, vol. i., introduction.

inhabitants, which led to self-government, and gave them the means for protecting themselves, not only against the encroachments of the lord, but against interference with their trade; and it was not long before the boroughs obtained public influence and importance, that could not have been acquired by individual residents in the boroughs.

Monasteries greatly increased during the reigns of Henry I., Stephen, and Henry II. The author of the "*Notitia Monastica*" computes the number at not less than 300; more monasteries and religious houses being founded in the kingdom in these reigns than in five hundred years before.¹ The lands with which they were endowed were held by the tenure of frankalmoigne, or free alms.²

The absence of the King during the greater part of his reign withdrew all attention from state affairs; but the prosperity of the nation was silently advancing. Property, by the course of natural events,—by marriages and deaths, by the division of lands among female coheirs, by subinfeudation and sales (the latter greatly stimulated by the desire of promoting the Crusades), by forfeitures and escheats and regrants from the Crown,—became divided and diffused, and the lands of the kingdom passed into numerous hands. The industry of the boroughs, and the application of it to manufactures, produced or greatly extended personal property; and the increase and diffusion of wealth prepared and prompted the nation to demand the changes which will be described in the next chapter.³

¹ Littleton's Henry II., vol. ii. p. 329.

² Ellis's Domesday Book, p. 252.

³ Peers' Report, vol. i. p. 32.

CHAPTER V.

MAGNA CHARTA.

JOHN	A.D. 1199, reigned 17 years.		
HENRY III.	1216	„ 56	„
28 EDWARD I.	1272-1300	28	„
		<hr/> 101	„

John's Accession contrary to Primogeniture.—Loss of Normandy.—His Vassalage to the Pope.—Combination of the Barons.—Demand of a Charter.—John gains over the Pope.—War declared.—Conference.—Magna Charta.—Its Form and Scope.—Liberties to the Church.—The Feudal Lords and Vassals.—To Towns and Trade.—For the Administration of Justice.—To Freemen.—Its Constitutional Principles of Government.—Security for its Observance.—Charter of the Forest.—John's Death.—Confirmations by Henry III.—Religious Ceremony.—Edward I.—Confirmatio Chartarum.—Articuli super Chartas.—Statutes of Confirmation.

JOHN, on the death of his brother Richard, possessed himself of the duchy of Normandy, and afterwards of the crown of England, to the prejudice of Arthur, Duke of Bretagne, the son of his elder brother, Geoffrey,—a proof that the law of primogeniture in the descent of the crown had not taken strong hold of the nation, or a design so flagitious would not have been successful.

The foreign provinces held with the duchy of Normandy were more influenced by the law of feudal descent. They espoused the right of Arthur, and called on Philip Augustus, King of France, as their paramount lord, to support the rightful heir. A war followed between John and Philip, but

it ended fatally for Arthur, who was delivered into John's power, and afterwards removed by murder to give legal sanction to John's occupancy of the throne. In a subsequent war between the same monarchs Normandy was lost, and was never afterwards restored to the crown of England.

The measure of Henry II. to diminish the distinction between the civil and ecclesiastical orders of men in the administration of justice, and to keep the kingdom independent of the Pope of Rome, received a signal overthrow in the reign of his son John. In the settlement of a dispute respecting the choice of an Archbishop of Canterbury, in which the monks of Canterbury had made an election contrary to his own, John appealed to the Pope, who dismissed both appointments, and chose Stephen de Langton to be the new Archbishop. John resisted the Pope's decree with great obstinacy, and the latter put him through the succession of coercive measures employed by that power to reduce refractory monarchs to obedience. He placed, first, his kingdom under the sentence of interdict, which was followed by excommunication, and then by deposition from his throne: the latter the Pope empowered and directed the King of France to carry into execution, by taking possession of John's dominions. John's opposition, broken down by these means, was finally overcome by the persuasion of Pandulph, the Pope's legate. To obtain the withdrawal of the papal decrees,—which his own superstition and that of all ranks of the people invested with a terrible reality, involving their peace and happiness, temporal and eternal,—and to avert the French invasion then in forward preparation,—John surrendered his lordship of Ireland and his crown and kingdom of England to the Pope and his successors, through the medium of Pandulph, basely agreeing to hold them as vassal of the Church of Rome, by the annual payment of one thousand marks. John ratified this agreement, by doing homage to Pandulph in the submissive forms which the feudal law established between vassals and their liege lord.

These events produced great dissatisfaction, which was heightened by a sense of the insufficiency of the charters granted by John's predecessors, to remove or moderate the tyrannous prerogatives, and the exactions and impositions, which they professed to have made illegal. John's personal conduct also towards his barons and their families increased the general discontent,¹ which at length became so great, that it was resolved to make an effort to obtain from the King a solemn and binding declaration of the royal prerogatives, and of the lawful rights and liberties of the people. The events which led to this resolution will be found in the writings of the historians, in whose narratives we cannot fail to be struck with the patriotism, the determination, and the valour of the barons; to feel proud of our ancient aristocracy, and grateful for their care of the liberties of the people. Nor should it be forgotten that the movement was supported by the clergy; it is even said to have originated in the exhortations of the new Archbishop, Stephen de Langton, "a man," says Hume, "whose memory ought always to be respected by the English."²

Cardinal Langton was an Englishman; and whatever other motives may have influenced him, it is not improbable that those of patriotism were amongst them. It is said that he showed to some of the discontented barons a copy of the charter of Henry I., which he had found in Canterbury Cathedral, and encouraged them to insist upon a renewal of it.³ For that purpose a confederacy was formed, which was

¹ Sir Walter Raleigh gives the following reasons for John's unpopularity:—"Standing accursed, whereby few or none obeyed him, for his nobility refused to follow him into Scotland; and he had so grieved the people by pulling down all the pales before harvest, to the end his deer might spoil the corn; and by seizing the temporalities of so many bishoprics into his hands; and chiefly for practising the death of the Duke of Bretagne, his nephew; so as the hearts of all men were turned from him." (*The Prerogative of Parliaments in England*, by Sir W. Raleigh, 1640. *Harleian Miscellany*, vol. iv. p. 304.)

² Hume, ch. ii.

³ Sir Walter Raleigh's account is that "the Charter of Henry I. was

cemented by oaths taken by the barons, in the presence of Langton, before the high altar at St. Edmond's Bury, on the 20th of November, 1214. They swore adherence to each other; and that if the King refused to grant them those liberties, they would withdraw themselves from fealty until he should by charter, sealed with his seal, confirm all they demanded. They all agreed that they would go to the King together, at Christmas, to demand the liberties, and in the meantime would provide themselves with horses and arms.¹

At the time appointed the confederated barons went to the King at Worcester, where he held his court, and made their demands. The King evaded them, and required and obtained until the following Easter to consider them. He employed that interval in gaining over the clergy and the Pope to his interests. "He gave up by a charter, to all the monasteries and cathedrals in the kingdom, the free right of electing their prelates, reserving only the form of a *congé d'élire* beforehand, and of the royal assent afterwards; but expressly declaring, that if both or either were arbitrarily withheld by the Crown, the election, notwithstanding, should be valid." John transmitted this charter to Rome, where the barons also sent ambassadors to entreat the Pope to support their claims. But John outbid them in the favour of the Holy Father, not only by so great a concession of power to the Church, but by also taking upon him the Cross, and vowing an expedition to the Holy Land against the infidels.²

not published, but left in deposit in the hands of the Archbishop of Canterbury for the time being, and so to his successors. Stephen Langton, who was ever a traitor to the King, produced this charter and showed it to the barons, thereby encouraging them to make war against the King." (Prerogative of Parliaments.) As the deposit of the charter with the Archbishop of Canterbury would have been in accordance with the Anglo-Saxon custom of confiding records to the care of the Church, Sir W. Raleigh's account seems very like the truth.

¹ Brady's History, vol. i. p. 494.

² Blackstone's Tracts.—History of the Charters, p. 292.

The Pope sent letters to the barons, disapproving of their endeavour to extort by force what they should have asked with reverence. But his letters did not arrive until after Easter, when the king had engaged to give his answer to the barons. They assembled at Stamford, in Lincolnshire, with a numerous army, which was placed under the command of Robert Fitzwalter, Earl of Dunmore, styling himself "Marshal of the Army of God and of the Holy Church in England." From thence they marched to Brackley, near Oxford, at which city the king was. The king, alarmed, sent to inquire the nature and extent of the liberties demanded. The barons replied by sending him a schedule of their demands. John exclaimed in his fury, with his usual oath, "And why do they not demand my crown also? By God's teeth I will not grant them liberties that will make me a slave!" The barons declared war; and actual hostilities were commenced, when the king agreed to a conference with the barons, to be held at Runnymede, between Windsor and Staines, on the 9th of June, 1215.

The conference having been adjourned to the 15th of June, was held on that day. Articles or heads of agreement were entered into by the Earl of Pembroke on behalf of the king, and by Fitzwalter on behalf of the barons. They were framed from the schedule of the barons, and are thus headed: "These are the articles which the barons ask, and which our lord the king hath granted."¹ They were afterwards rendered into two charters, one of which became the Great Charter, the other the Charter of the Forests.² The barons having obtained the charters, did homage to their sovereign, and the assembly was dissolved.³

The great extent of the liberties and privileges granted

¹ The articles are in Latin, and are entitled, "*Ista sunt capitula, quæ Barones petunt, et Dominus Rex concedit.*" (Rymer's *Fœdera*, vol. i. p. 129.)

² Brady's *History*, vol. i. p. 497.

³ Blackstone's *Law Tracts*, p. 307. Blackstone says that such a number of originals was made that one was deposited in every county, or at least in every diocese.

or confirmed by this charter, and its superior importance as compared with the previous charters of the Norman Kings, obtained for it the distinguishing name of *Magna Charta*, and has made it celebrated as a main bulwark of the constitution.¹ These liberties and privileges, rather indiscriminately placed in the charter, may be arranged into classes:—those granted to the Church and Clergy,—to the feudal Lords or nobility and their vassals or tenants,—to cities, towns, and boroughs, and for the encouragement of trade,—those concerning the administration of justice,—those granted to the body of the people, as freemen, in extension of their rights and liberties, or in restraint of the Royal prerogatives; and, lastly, axioms and principles of constitutional government, of imperishable importance. When these have been selected, there will remain some articles which were of a temporary character, to remove or redress then existing grievances, that had resulted from the illegal acts or the hostile conduct of John.

The Great Charter opens in a high monarchic strain,—“John, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou; to his archbishops, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, governors, officers, and to all his bailiffs and liegemen, greeting: Know ye that we, in the presence of God, and for the health of our soul and the souls of our ancestors and heirs, and to the honour of God and the exaltation of his Holy Church, and amendment of our kingdom, by advice of our venerable fathers Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, Bishops; Master Pandulph, our Lord the Pope’s sub-deacon and ancient servant; Brother Aymeric, Master

¹ Sir Walter Raleigh calls the charter of Henry I. the Great Charter, and says that John confirmed it. (*Privilege of Parliaments.*)

of the Temple in England; and the noble persons William Marescall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan de Galloway, Constable of Scotland; Warin Fitzgerald, Peter Fitzherbert, Hubert de Burgh, Seneschal of Poictou; Hugh de Neville, Matthew Fitzherbert, Thomas Basset, Alan Basset, Philip de Albiney, Robert de Roppelay, John Marescall, John Fitzhugh, and others our liegemen." It concludes with the words, "Given under our hand in the presence of the witnesses above-named, and many others, in the meadow called Runimede, between Windeleshore and Stanes, the 15th day of June, in the 17th year of our reign" (1215).¹

The opening article of the Great Charter relates to the Church.² It is "in the first place granted to God, and by this our present charter confirmed, for us and our heirs for ever: That the English Church³ shall be free and enjoy her whole rights and her liberties inviolable. And we will have them so to be observed as it may appear that the freedom of elections, which was reckoned most necessary for the English Church, which we granted and confirmed by our charter, and obtained the confirmation of it from Pope Innocent III., before the discord between us and our Barons, was of our mere free will; which charter we will observe, and do will it to be faithfully observed by our heirs for ever."

That article is followed by a general grant "to all our freemen of our kingdom, for us and our heirs for ever, of all the under-written liberties, to have and to hold, to them and their heirs, of us and our heirs."

The first of the new liberties granted are those relating to the tenure of land under the feudal system, their purpose

¹ The many others may be intended to include Robert Fitzwalter and his confederates.

² There are several translations of the Charter of John which are not verbally alike.

³ "Anglicana Ecclesia." (See the Latin Charter, Rymer's *Fœdera*, vol. i. p. 131.)

being to relieve the tenants in chief of the crown from the oppression of the king's prerogatives as Lord Paramount. These have lost their importance and most of their interest, since the final extinction of the feudal system by act of parliament in the reign of Charles II. But they were directed to the mitigation of grievances at the time oppressive; and in a constitutional point of view they were important, as introducing law and certainty in place of undefined power. The remedies provided by the several articles suggest the abuses that prevailed, and give a picture of the relations then subsisting between the king and the nobles and their families. They are substantially as follows:—

3. If an earl or baron, or others who hold of the king *in capite*, by military service, shall die, leaving his heir of full age, he shall have his inheritance by the ancient relief; the heir of an earl, for a whole earl's barony, £100; of a baron, for a whole barony, £100 [marks]; of a knight, for a whole knight's-fee, by 100 shillings at most. 4. But if the heir shall be under age, and shall be in ward, when he comes of age, he shall have his inheritance without relief or without fine. 5. The warden of the land of the heir under age shall take of his land only reasonable issues, customs, and services; and that without destruction and waste of the men or things. And if the king commit the guardianship of these lands to the sheriff or any other, and he make destruction and waste on the ward-lands, he shall be compelled to give satisfaction. Or if the king sell the wardship of any lands to any one, and he makes destruction or waste, he shall lose the wardship. 6. The warden shall keep up and maintain the houses and other things pertaining to the heir's land, and shall restore to the heir, when he comes of age, his whole land stocked with ploughs and carriages. 7. Heirs shall be married without disparagement, so as that, before matrimony shall be contracted, those who are nearest to the heir in blood shall be made acquainted with it. 8. A widow, after the death of her husband, shall forthwith and without any difficulty have her marriage and her inheri-

tance; nor shall she give anything for her dower, marriage, or inheritance; and she may remain in the house of her husband forty days after his death; within which term her dower shall be assigned. 9. No widow shall be distrained to marry herself so long as she wishes to live without a husband, but she shall give security not to marry without the king's assent, if she holds her lands of him; or without the consent of the lord of whom she holds, if she holds of another.

The aids demandable of the tenants by Knight-service are defined in the following articles:—18. We will not for the future grant to any one that he may take aid of his own free tenants, unless to redeem his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for these there shall be only paid a reasonable aid. 19. No man shall be distrained to perform more service for a knight's-fee, or other free tenement, than is due from thence. 29. If any one that holds of us a lay-fee dies, and the sheriff or our bailiff show our letters-patent of our summons concerning the debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased found upon his lay-fee, to the value of the debt, by the view of lawful men, so that nothing be removed until our whole debt be paid; and the rest shall be left to the executors to fulfil the will of the deceased; and if there be nothing due from him to us, all the chattels shall remain to the deceased, saving to his wife and children their reasonable shares.

“32. No constable (of a castle) shall distrain any knight to give money for castle-ward, if he himself shall do ward in his own person, or by another able man in case he shall be hindered by any reasonable cause. And if we shall have led or sent him to the army, he shall be free from castle-ward for the time he shall be in the army by our command.”

It may be inferred from the following articles, that the king had extended his prerogative of wardship to land which was not held by a military tenant of the crown.

“40. If any one holds of us by fee-farm, or socage, or

burgage, and holds lands of another by military service, we will not have the wardship of the heir or land which belongs to another man's fee, by reason of what he holds of us by fee-farm, socage, or burgage; nor will we have the wardship of the fee-farm, socage, or burgage, unless the fee-farm owe military service.

"41. We will not have the wardship of an heir, nor of any land which he holds of another by military service, by reason of any petit serjeanty he holds of us, by the service of giving us daggers, arrows, or the like.

"47. If any man hold of any escheat, as of the honour of Wallingford, Nottingham, Bologne, Lancaster, or of other escheats which are in our hands and are baronies, and shall die, his heir shall not give any other relief, or perform any other service to us, than he would to the baron, if the barony were in possession of the baron; and we will hold it after the same manner the baron held it.

"50. All barons who are founders of abbeys, and have charters thereof of the kings of England, or are entitled by ancient tenure, shall have the custody of them, when void, as they ought to have."

The restraints upon the royal prerogative imposed by the preceding articles, were extended to the barons and clergy in respect of their tenants by subinfeudation; or, in the quaint language of the charter:—

"65. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as belongs to us, towards our men, all of our kingdom, as well clergy as laity, shall observe, as far as they are concerned, towards their men."

The clauses connected with towns and with trade may be thus collected:—

"10. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as there shall be chattels of the debtor upon the premises sufficient to pay the debt. Nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

“ 11. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt; and, if they will, they shall have the lands and rents of the debtor until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof, against the said sureties.

“ 15. Concerning the aids of the city of London, there shall only be paid reasonable aids; and the city of London shall have all its ancient liberties and free customs, as well by land as by water.

“ 16. Furthermore, we will and grant that all other cities and boroughs, and towns and Ports, shall have all their liberties and free customs.

“ 26. Neither a town, nor any person, shall be distrained to make bridges over rivers, unless that anciently and of right they are bound to do it.

“ 28. All counties, hundreds, wapentakes, and trethings shall stand at the old farms, without any increase, except on our demesne manors.

“ 36. All wears for the time to come shall be demolished in the rivers Thames and Medway, and throughout all England, except upon the sea-coast.

“ 38. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth and russets and haberjects, that is to say, two ells within the list; and the weights shall be as the measures.

“ 45. All merchants shall have safe and secure conduct to go out of and come into England, and to stay there, and to pass as well by land as water; to buy and sell, by the ancient and allowed customs without any evil tolls, except in time of war, and when they shall be of any nation at war with us. And if there shall be found any such in our land in the beginning of a war, they shall be attached, without damage to their bodies or goods, until it may be known to us or our chief justiciar how our merchants be treated in the nation

at war with us; and if ours be safe there, the others shall be safe in our land.”¹

The articles relating to the administration of justice are the following:—

“20. Common pleas shall not follow our court, but shall be holden in some certain place.

“21. Trial upon the writs of *Novel disseisin*, of *Mort d’ancestor*, and of *Darrein presentment*, shall be taken only in their proper counties, and after this manner:—We, or (if we shall be out of the realm) our chief justiciary, shall send two justiciaries through every county four times a year; who, with four knights chosen out of every shire by the people, shall hold the said assizes in the county, on the day and at the place of the county.

“22. And if the aforesaid assizes cannot be determined on the county day, so many of the knights and freeholders as have been present shall be appointed to decide them, as shall be sufficient to make the judgments, according as there shall be more or less business.

“27. No sheriff, constable (of a castle), coroners, or other our bailiffs, shall hold pleas of the Crown.

“35. We will retain the lands of those that are convicted of felony but one year and a day, and then they shall be delivered to the lord of the fee.

“37. The writ which is called *Præcipe*, for the future, shall not be granted to any one of any tenement whereby a freeman may lose his court.

“49. We will not make any justiciars, constables, sheriffs, or bailiffs, but of such as are knowing in the law of the realm, and are disposed duly to observe it.”

The articles which seem to be specially applicable to the body of the people, as freemen, are the following:—

“30. If any freeman die intestate, his chattels shall be distributed by the hands of his nearest relations and friends,

¹ A humane provision, which made foreign nations arbiters of the treatment of their own subjects.

by view of the Church, saving to every one the debts which the deceased owed him.

“31. No constable, or other bailiff of ours, shall take corn or other chattels of any man, unless he presently gives him money for it, or hath respite of payment from the seller.

“33. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, unless with the consent of that freeman.

“34. Neither shall we or our officers, or others, take any man's timber for our castles, or other uses, unless by the consent of the owner of the timber.

“46. It shall be lawful for the time to come for any one to go out of the kingdom, and return safely and securely, by land or by water, saving his allegiance to us, unless in time of war, by some short space for the common benefit of the kingdom, except prisoners and outlaws (according to the law of the land) and people in war with us, and merchants who shall be in such condition as is above-mentioned.

“48. Men who dwell without the forest, from henceforth shall not come before our justiciars of the forest upon common summons, save such as are impleaded, or are pledges for any that were attached for something concerning the forest.

“51. All forests that have been so made in our own time shall forthwith be disafforested, and the like shall be done with the banks that have been put in defence by us during our reign.

“52. All evil customs concerning forests, warrens, and foresters, warreners, sheriffs and their officers, banks and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same shire, chosen by the good men of the same county; and within forty days after the said inquest shall be utterly abolished, so as never to be restored, so that we be first informed of it, or our justiciar if we are not in England.

“56. If any one hath been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles,

liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, the matter shall be decided by the five-and-twenty barons hereafter mentioned for the preservation of the peace.

“59. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other man than her husband.”

But curious and interesting as is this body of redress, the chief value of Magna Charta, at the present day, are the fundamental principles or axioms of constitutional government which it embodied in laws or promulgated. These are as follows:—

“14. No scutage or aid shall be imposed in our kingdom unless by the common council of our kingdom, except to redeem our person, and to make our eldest son a knight, and once to marry our eldest daughter; and for these there shall only be paid a reasonable aid.

“17. And for the holding of the common council of the kingdom to assess aids (except in the three cases aforesaid) and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls, and great barons of the realm singly by our letters; and furthermore, we will cause to be summoned in general, by our sheriffs and bailiffs, all others who hold of us *in capite*, at a certain day; that is to say, forty days (before their meeting) at least, and to a certain place; and in all letters of such summons we will declare the cause of the summons. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

“23. A freeman shall not be amerced for a small offence, but according to the degree of the offence, and for a great offence in proportion to the heinousness of it, saving to him his contenement;¹ and after the same manner a mer-

¹ ‘Contenement,’ according to Lord Coke, signifies *countenance*; and he says that the land of a freeholder, the armour of a soldier, and the books of a scholar, are their countenances. The reservation applies to

chant, saving to him his merchandise; and a villain shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciements shall be assessed but by the oath of honest men of the neighbourhood.

“24. Earls and barons shall not be amerced but by their peers, and according to the degree of the offence.

“25. No clerk shall be amerced for his lay tenement but according to the proportion of the aforesaid, and not according to the value of his ecclesiastical benefice.

“39. From henceforward nothing shall be given or taken for a writ of inquisition, from him that desires an inquisition of life or limb, but it shall be granted *gratis*, and not denied.¹

“42. No bailiff for the future shall put any man to his law upon his single accusation, without credible witnesses produced to prove it.²

“43. No freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or anyways destroyed; nor will we pass upon him nor send upon him, unless by lawful judgment of his peers or by the law of the land.³

“44. We will sell to no man, we will not deny or delay to any man, right or justice.”

such of the goods and chattels of the amerced as were indispensable to his rank or occupation. At the present day, tools of workmen are exempt from liability to distress for rent. The King defines his right to amerce the villain, if convicted of an offence against the law of the land.

¹ This writ is analogous to that of Habeas Corpus. Lord Coke describes it as the writ *de odio et atia*, which the Common Law gave to a man imprisoned for the death of a man, for the which without the King's writ he could not be bailed (2nd Inst.; from Observations on Magna Charta, taken from 2nd Institute, by Edwd. Cooke, 1680, p. 71).

² Under this word ‘bailiff’ is comprehended every justice, minister of the king, steward, and bailiff (*idem*, p. 71).

³ This extends to villeins, who were free against all, except their lord. As these celebrated clauses were altered in the Magna Charta of 9 Henry III., it will be useful to give them as they now stand in the statute-book:—

“Cap. XXIX. No Freeman shall be taken, or imprisoned, or be dis-

The Great Charter concludes with a declaration that,—
 “(68) we will not, by ourselves or others, procure anything, whereby any of these concessions and liberties be revoked or lessened; and if any such thing be obtained, let it be null and void, neither shall we ever make use of it, either by ourselves, or any other.

“71. Wherefore we will and firmly enjoin, that the Church of England be free, and that all men in our kingdom have and hold the aforesaid liberties, rights, and concessions, well and in peace, freely and quietly, fully and wholly, to them and their heirs, of us and our heirs, in all things and places, for ever as aforesaid.

“72. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.”¹

When we consider the nature of these provisions, and reflect upon the constitutional principles they introduced or recognized, we can hardly estimate the value of Magna Charta too highly. The 14th and 17th articles established the principle of consent to taxation, and provided the means of ensuring its adoption,—means which were in the course of time expanded into the full parliamentary Con-

seised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.”

¹ The clauses omitted from this analysis of the Great Charter are as follow :—

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|---|---|
| 12. } Debts to the Jews. | 61. The Welsh, to be restored to their lands. |
| 13. } | 62. Respites as to the Welsh. |
| 53. Hostages delivered up. | 63. Welsh hostages. |
| 55. Foreign soldiers to be sent out of the kingdom. | 64. King of Scots. |
| 57. Respites, during the Crusades, for claims on the Crown. | 66. Security (mentioned afterwards). |
| 58. Respite as to Forests, etc. | 66. Majority may act. |
| 60. Unlawful fines remitted. | 69. } Amnesty. |
| | 70. } |

stitution of the present day. Those which provide that punishment shall be proportioned to the offence, and shall not be inflicted but by the lawful judgment of peers, or equals, of each rank,—that people shall not be deprived of their property by the arbitrary power of the Crown, without voluntary sale,—and that justice shall not be sold, or denied, to any man,—whilst we shudder at the tyranny and oppression which required their enactment, make us confess that Magna Charta well deserves the admiration it has always obtained from the English people. “It is,” says Mr. Hallam, “the key-stone of English liberty. All that has since been obtained is little more than a confirmation or commentary; and if every subsequent law were swept away, there would still remain the bold features that distinguish a free from a despotic monarchy.”¹

Magna Charta is supposed to contain many of the laws of King Edward the Confessor, which the Saxons in their captivity so ardently desired; and after the grant of the Charter, the demand for the ancient laws ceased. But in those days it was easier to induce or to compel monarchs to grant charters, than to observe them when granted. The charters did not remove the actual power from the monarch; and it was left to his good faith, when the force which induced his submission was withdrawn, to abide by his grant or to disregard it. The barons were conscious of this insecurity, and they provided for it by a curious arrangement which appears in the Charter. It was granted that the Barons should choose twenty-five barons to “take care with

¹ Hallam's *Middle Ages*, vol. ii. p. 58. Sir James Mackintosh, in his *History of England*, has the following remark:—“Many parts of the Great Charter were pointed against the abuses of the power of the King as Lord Paramount, and have lost their importance since the downfall of the system of feuds, which it was their purpose to mitigate. But it contains a few maxims of just government applicable to all places and times, of which it is hardly possible to overrate the importance of the first promulgation by the supreme authority of a powerful and renowned nation.” (Vol. i. p. 217.)

all their might to hold and observe, and cause to be held and observed, the peace and liberties granted to them. And in case of any default, they were to repair to the King, or if out of the realm, his justiciar, "and, laying open the grievance, may petition to have it redressed without delay;" and if not redressed within forty days, the King granted that they "may distrain and distress us all the ways possible, namely, by seizing our castles, lands, possessions, and in any other ways they can, till the grievance is redressed according to their judgment, saving harmless our own person and the person of our queen and children; and when it is redressed, they shall obey us as before." It is clear from this provision that the constitutional maxim that "the king can do no wrong" had not yet arisen.

The twenty-five barons selected had at their head the renowned Robert Fitzwalter, and with them the King entered into a covenant of security, that the barons should hold the city of London, and the Archbishop of Canterbury the Tower of London, in bail from the King until the Assumption of the Blessed Mary following (15th August), within which term the demands of the barons should be granted according to the tenour of the charter. If these things were done, or if the king should not prevent their being done, within the time limited, the City and Tower should be delivered up to the king; if not, they should be held until the acts were completed; and in the meantime both parties should recover the castles, lands, and towns which they had at the beginning of the war.¹

The Charter of the Forest, which was granted concurrently with Magna Charta, has little interest in modern times. It will suffice to state its leading principle, which is comprised in its first article,—that all forests which the King had afforested should be viewed by good and lawful men; and if he had made forest of any other wood more than of his own demesne, whereby the owner of the wood had hurt, forthwith it should be disafforested; and if the King had

¹ Rymer's *Fœdera*, vol. i. p. 132.

made forest of his own wood, then it should remain forest; saving the common of herbage, and of other things in the same forest, to them which were before accustomed to have the same. Sixteen articles regulate the enjoyment of these rights.¹

John, by the aid of the Pope, who interposed as feudal lord of the kingdom, took measures to recover the power of which the barons had deprived him. He hired foreign troops, and renewed the civil war. The Pope issued a Bull, which prohibited the barons from exacting the observance of the Charter, and the king from paying any regard to it. The barons had recourse to the desperate expedient of calling in Lewis, the eldest son of the King of France, offering to transfer their allègiance to him. Lewis landed in England on the 21st of May, 1216, and he reduced John to great difficulties; but in the midst of these commotions John unexpectedly died at Newark, on the 19th of October following, little more than a year after the grant of Magna Charta.

Henry III., son of John, succeeded him, being then only nine years old. The country was in confusion, great numbers having transferred their allegiance to Lewis. William Marescall, Earl of Pembroke, assumed the guardianship of the young king, and of the realm; and he brought about an arrangement by which Lewis quitted the kingdom. Pembroke, to conciliate the people, issued a charter, dated the 12th of November, 1216, twenty-four days after the death of John. Another charter was issued, in the second, and a third followed in the ninth year of Henry's reign. The latter, transcribed from the Great Charter, but with some alterations, which will be hereafter noticed, came to be considered as "the great charter of liberties of the kingdom," and it is this charter which appears in our statute-book as "Magna Charta."

The charter of 9 Henry III. differs from its great original by the omission of those clauses which have been

¹ See the *Charta de Forestâ*, Rymer's *Fœdera*, vol. i. p. 133.

described as of a temporary nature. The 14th and 17th Articles, relating to the imposition of aids, and the mode of summoning the great council to assess them, are also omitted,—an omission which probably arose from a feeling that it was not desirable to record an undertaking so adverse to the king's prerogative. There are verbal alterations in several of the remaining clauses, which will receive attention as occasion requires. The additions are a clause declaring that the County Court shall be holden but from month to month,—that the Sheriff shall keep his Turn in the Hundred, but twice in the year,—and that the View of Frankpledge shall be held at Michaelmas. There is also an article for the suppression of Mortmain, and of some modes of evading that law. It declared that it shall not be lawful from thenceforth to any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he received it. If any give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.¹

This charter and the Charter of the Forest were granted by Henry in consideration of an aid of a fifteenth part of the movables of all persons in the kingdom. In the

¹ The following is the opening and conclusion of the Magna Charta of Henry :—" Henry, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyenne, and Earl of Anjou, to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and other our faithful subjects which shall see this present Charter, greeting.

" Know ye that we, unto the Honour of Almighty God, and for the salvation of the souls of our progenitors and successors, Kings of England, to the advancement of holy Church, and the amendment of our Realm, of our mere and free will, have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all free-men of this our Realm, these liberties following, to be kept in our kingdom of England for ever.

" Given at Westminster, in the ninth year of our reign."

twenty-first year of his reign, Henry granted another confirmation, receiving for the gift and grant an aid of the thirtieth part of movables of certain descriptions; and again, in the thirty-sixth year of his reign, receiving a fifteenth part of movables. But neither the repeated grants, nor the pecuniary considerations which Henry received for them from his subjects, could ensure his observance of the charter, and resort was had to a solemn religious ceremony, by which it was hoped to affect his conscience by oaths and imprecations. At a great council, held in the great hall of the king at Westminster, on the 3rd of May, 1254, a ceremonial was prepared, at which the King was present, with his barons and prelates; the latter in pontificals, and holding burning tapers in their hands. The Great Charter and the Charter of the Forest were read before them. They pronounced the sentence of excommunication against every one who should thenceforth violate these fundamental laws. They threw their tapers on the ground, and exclaimed, "May the soul of every one who incurs this sentence so stink and corrupt in hell." The king added, "So help me God, I will keep all these articles inviolate, as I am a man, as I am a Christian, as I am a knight, and as I am a king crowned and anointed." It is melancholy to reflect that so tremendous a ceremony was of no avail. Henry's conscience was relieved by the dispensations of the Pope, and he died regardless of his subjects' rights, and of his own solemn engagements.¹

The laxity of Henry in the observance of Magna Charta passed to his son Edward I. Another interference of the barons took place, and, in the twenty-fifth year of his reign, eighty-two years after the grant of the charter by John, "a confirmation of the Great Charter, and the Charter of the Forest" was granted by Edward. Although in form a charter, it appears in the statute-book as a statute, and is

¹ The Sentence of Curse sworn by the Bishops against the breakers of the Great Charter, will be found in Pickering's Statutes, vol. i. p. 33, ed. 1762.

called "CONFIRMATIO CHARTARUM."¹ It enjoined that the charters should be sent, under the king's seal, as well to the Justices of the Forest as to others,—to all sheriffs of shires, and other officers, and to all cities,—with the king's writs, directing them to cause the charters to be published, and to declare to the people, that he had confirmed them in all points;—and that "the justices, sheriffs, mayors, and other ministers which had, under the king, the laws of the land to guide, should allow the charters to be pleaded before them in judgment, in all their points; the Great Charter as the common law, and the Charter of the Forest according to the assize of the forest, for the wealth of the realm." It was also declared that "judgments contrary to the points of the charters, should be undone and holden for nought;"—that the charters should be sent, under seal, to cathedral churches throughout the realm, there to remain, and should be read before the people two times by the year;"—and that "all archbishops and bishops should pronounce the sentence of excommunication against all those that by word, deed, or counsel, did contrary to the charters; and that the curses be twice a year denounced and published by the prelates."

These provisions seem to have been insufficient, for, in three years afterwards another statute appears, entitled "ARTICULI SUPER CHARTAS."² It states that "forasmuch as the charters had not been observed nor kept, because there was no punishment executed upon them which offended against the points of the charters; the King had again granted, renewed, and confirmed them, at the request of his prelates, earls, and barons, assembled in his Parliament holden at Westminster; and had ordained, enacted, and established certain articles against all those that offend contrary to the points of the charters, or that in anywise transgress them." These articles required that the charters be delivered to every sheriff of England, under the king's seal, to be read four times in the year before the people in

¹ 25 Edw. I., Stat. 1, 1297.

² 28 Edw. I., Stat. 3, 1300.

the full county, at the usual quarterly feasts ;—and for these two charters to be firmly observed in every point and article (where before no remedy was at the common law) there should be chosen, in every shire-court, by the commonalty of the shire, three substantial men, knights or other lawful, wise, or well-disposed persons, which should be justices, sworn and assigned by the king's letters-patent, to hear (without any other writ, but only their commission) such complaints as should be made upon all those that commit or offend against the charters ;—and to determine them without allowing the delays which should be allowed by the common law ;—with power to punish by imprisonment, by ransom, or by amerciamment, according to the trespass.

This statute afterwards states that, “ besides these things granted upon the articles of the charters aforesaid, the King, of his special grace, for redress of the grievances that his people had sustained by reason of his wars, and for the amendment of their estate, and to the intent that they may be more ready to do him service, and more willing to assist and aid him in time of need, had granted certain articles, the which he supposeth shall not only be observed of his liege people, but also shall be as much profitable, or more than the articles heretofore granted.” Nineteen articles then follow, which relate to matters that have little bearing on our modern constitution, but which so far as they appear to be interesting, will be hereafter noticed.

There is no further evidence in the statute-book that Magna Charta continued to be unobserved ; unless it be so inferred from the fact that, between the twenty-eighth year of Edward I. and the fourth year of Henry V.,—the last statute of confirmation,—there are no less than twenty-nine statutes for confirming it. It seems to have been the first proceeding of each new Parliament, to pass a short statute to confirm the great charter. There are fourteen statutes of confirmation in the reign of Edward III. In the first Parliament of Richard II. it appears that the Great Charter, and the Charter of the Forest, were read before the Parlia-

ment, at the request of the Commons. Assuming then that Magna Charta was generally observed from the time of the statute of *Articuli super Chartas*, 28 Edw. I., it occupied, from its grant by King John in 1215, eighty-five years of incessant contest and struggle to establish it as settled law ; and when it is considered that Magna Charta was itself the issue of struggles for charters carried on with every successive Norman king, from the Conqueror to John, we have a period of no less than two hundred and thirty-four years occupied in the parturition and operative establishment of the code of Magna Charta.

CHAPTER VI.

RISE OF THE HOUSE OF COMMONS.

BETWEEN

HENRY III., 49th year of his reign, 1265,

AND

EDWARD I., 23rd year of his reign, 1295.

Revenue and independent state of the Monarchs.—Rise of Representation.—Greater and Lesser Barons.—Knights.—Provisions of Oxford.—Leicester's Parliament.—Knights, Citizens, and Burgesses summoned.—First Instance.—Their Wages.—Representation discontinued.—Edward I.—Statutes passed by his Council and Barons.—Knights again Summoned.—Knights, Citizens, and Burgesses.—Representation of the Commons established.

THE relation between the king and the people in the days of the Plantagenets did not produce that community of interest which now exists. The king possessed the kingdom like a private estate. He derived a large revenue from the royal lands or demesnes; and besides these, by the feudal laws, he received pecuniary aids and other contributions from the estates of his barons; and in some instances, such as wardship and escheat, their entire incomes. He also received scutage or escuage, a pecuniary commutation for military service, which being levied on every knight's-fee¹ produced a large return; and on the royal towns he levied toll or tallage, or, where these had been commuted, a fee-farm rent. He levied customs upon merchandise imported and exported, especially on wool exported; and he took the prisage of wine, or two casks out of every

¹ The number of Knights'-Fees established at the Conquest was 60,215.

ship. The money so derived passed into his treasury ; and he spent it according to his own uncontrolled pleasure, or as his necessities required,—in the expenses of his government, in his own household, in peace or in war. When this revenue was sufficient, the people were spared and were content ; but when the king found it necessary to require an extraordinary aid or subsidy from his subjects, he then had to assemble his great council, and to obtain their consent. The executive power was entirely in his hands ; and the legislative power was also exercised by him as the originator of all the laws, subject only to the assent, oftentimes probably merely formal, of the prelates and barons, as the great men of the realm.

But in the reign of Henry III. circumstances occurred which were destined to bring about an important change in the legislative element of the government,—to remove from the king, and to a great extent from the lords, the power of taxation, and to place it in other hands. The development of the great principle of the REPRESENTATION OF THE PEOPLE in Parliament is here referred to, which has given to the English constitution its peculiar excellence and distinction ; and which has contributed, as a main cause, to establish the eminence which the Anglo-Saxon race has attained in freedom, commerce, wealth, public spirit, and power.

It is not unlikely that the principle of representation may have been put in action in ancient times, when large bodies of men found themselves opposed to each other, on questions of public interest. Convenience would naturally suggest the selection of representatives ; and in ecclesiastical councils, the various churches were represented by members who attended as delegates or representatives. There are even instances, in our early history, of the selection of knights to assess the proportion of an aid or subsidy to be borne by the respective counties of the kingdom. But popular representation, as a principle and constituent part of government, it is generally admitted, had its birth in the circumstances about to be related.¹ But it originated in no premeditated

¹ The representative government of this nation (England) is the only

design to found a system of representative government ; and it was slow in attaining its present proportion and dignity. Its spring and rise,—first as regards the representation of counties, and next of cities and boroughs, will now be briefly traced.

By the feudal system, as has been explained, large estates were granted to the Norman barons on condition of military service and suit in the king's court ; and these barons, with the prelates,—the latter in right of their baronies,—formed the great council of the king. The councils were summoned by the king at his pleasure and by his writ,—the common mode of communicating his commands to all ranks of persons and public bodies. The councils, after the Conquest, were often called Parliaments ; a name which was applied to assemblies of various kinds ; to the *Aula Regis*, and to the convention from which the Great Charter issued, which was called *Parliamentum Runnymedæ*.

In progress of time, as the original baronies escheated and returned into the hands of the Crown, it became the policy of the king to divide them into smaller baronies, and thus to provide adherents against the power of the greater barons. But the new grants were made to the new grantees as tenants *in capite*, and they thus became of the same order as the greater barons ; but not being possessed of the same wealth and power, they came to be distinguished as the lesser or smaller barons. They were equally entitled with the great barons to be summoned to, and to sit in, the great council.¹ But although they possessed that right, and regarded it as a high privilege and distinction attached to their order, attendance at the council was a burden ; and they were satisfied to be exempt from it, or with only an occasional attendance.

representative government which, until our days, has existed with full vitality in Europe. (Guizot's ' History of Representative Government in Europe.')

¹ The charter implies some distinction between those styled " Majores Barones " and the rest of the tenants *in capite* of the Crown ; but it also implies that all the tenants *in capite*, or at least all the military tenants *in capite*, had an equal right to be summoned. (Peers' Report, vol. i. p. 67.)

The great numbers of the military tenants of the Crown, whether called lesser barons or knights (for both were tenants *in capite* of the king, and any distinction between them soon merged in their common knighthood), would have made it difficult for the king to summon them individually and personally by his writ or letter, like the great barons. Magna Charta solved the difficulty by providing that, "for holding the general council of the kingdom to assess aids, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls, and great barons (*majores barones*) of the realm, singly by our letters; and furthermore, we will cause to be summoned in general by our sheriffs and bailiffs, all others who hold of us *in capite*."¹ This separation of the baronage into two classes,—those summoned by writs, directed to each individually, and those summoned by sheriffs under the direction of writs addressed to them,—laid the foundation of the distinction which afterwards arose between the ranks of nobility and gentry.

The next step towards the representation of the inferior class, arose from the necessity of consulting the convenience as well of the king and council, as of the knights themselves. The knights were a numerous class in each county. All persons holding land under the Crown as tenants-in-chief, of the yearly value of twenty pounds, were compellable to receive knighthood. The attendance of so large a body, even if it were practicable, would have rendered deliberation impossible. Attendance by representatives must, therefore, when it was desired to act upon the provision of Magna Charta, have suggested itself as the natural mode of giving effect to the general, but impracticable, right; and thus representation of the counties arose. An election of representative knights took place at the county-court, before the sheriff; the choosers (as the electors are called in the ancient statutes) being the knights themselves,—but whether with or without the freeholders, is a question much

¹ See Magna Charta, *ante*, p. 58.

controverted. At the present day, the counties are supposed to be represented by actual knights. The writ directs the sheriff to return two knights; and each member, when his election is declared, is girt with a sword to supply the fiction of knighthood.

But Magna Charta,—out of which the representation of the counties by knights, as members of the feudal union, may be considered to have almost directly sprung,—gave not the remotest ground for foreseeing, as a coming event, the attendance, in the great council, of representatives of cities and boroughs: it provided, as we have seen, that the city of London, and all other cities and boroughs, should have their ancient liberties and free customs;¹ but these places, at the time of Magna Charta, were too completely excluded from the feudal union, to be allowed any share whatever in the national government. London was, indeed, a city of considerable importance; but the other cities and boroughs,—with the exception of a few to whom charters of immunity had been granted,—belonged to the king or the great barons, who treated them as property, exacting from them toll or tallage. But as trade and commerce extended, the cities and boroughs increased in population; and as their citizens and burgesses then also increased in power and importance they were able to procure, or to force from their lords, charters of liberties, which were numerous granted in the reign of John; so that, in the reign of Henry III., they had begun to acquire self-government, and oftentimes the ownership of land in the vicinity of the city or borough; and, what was more important, the abolition of the arbitrary power of tallage, by the substitution of a fee-farm rent, or rent certain. The charters by which these changes were produced, were often wrung from the lords of the boroughs; and they have been well called treaties of peace between the burgesses and their lords.²

¹ See p. 55, *ante*.

² Guizot's History of Civilization in Europe, p. 52. This observation of M. Guizot is illustrated by a charter tested Tuesday, the Feast

It is remarkable that the first summoning of representatives of counties and boroughs to a great council, did not proceed from the sovereign, but from a faction which, in the reign of Henry III., obtained for a time the command of the kingdom. Henry had displeased his subjects by his devotion to and his enrichment of foreigners. He paid no regard to the Great Charter, or the laws which it promulgated; although he was forced frequently to recognize and confirm it. The pusillanimity of his character was unequal to the control of the turbulent barons; many of the most powerful of whom lived in continual opposition to his administration and government. At length Simon de Montfort, Earl of Leicester, conspired with other barons to get the king into their power. They forced him to call a great council or parliament at Oxford, which assembled there on the 11th of June, 1258: it consisted of the prelates and barons only; they came to the assembly armed, and attended by their military vassals, and the king found himself a prisoner in their hands. Through their coercion, certain laws were passed, called "THE PROVISIONS OF OXFORD;" which, until they were revoked by the restored authority of the king, took all power from him, and put the government under the control of twenty-four selected barons. Civil war was the result: a battle was fought, between the king and the

of St. Mathias the Apostle, in the year 1305, and 34 Edward I., granted by William de Breouse, Lord of the Honour of Brember and Gower, to his burgesses of Swansea. After referring to a suit carried on by the burgesses against the lord in the king's court, which was compromised by the charter, it concludes with a grant by the lord,—that if he violate, by any act or device, the liberties or customs of the burgesses, he is become bound and indebted to our lord the king, of five hundred pounds of silver, in the name of pure debt; and to any one or more of the burgesses to whom wrong shall be done, contrary to the tenour of the charter, "in five hundred marks of silver, in the name of a pure debt," to be paid within "half a year of the wrong committed." (Dillwyn's Contributions towards a History of Swansea.) The combination and power of the burgesses must have been considerable to have forced concessions, guaranteed by a penalty, from so powerful a baron as William de Breouse.

barons, at Lewes, on the 14th of May, 1264, in which the king's army was routed, and the king surrendered himself prisoner to the barons; his son, Prince Edward, being detained a hostage in Dover Castle.

Through this success, Leicester acquired the exercise of the sovereign power; and, to strengthen his power by increasing his popularity, he summoned, in the name of the captive king, a great council or parliament, to meet in London on the 20th of January, 1265, in the forty-ninth year of Henry's reign. The record of this parliament exists: it shows that twenty-three lay lords, and one hundred and twenty-two ecclesiastics, including abbots, priors, and deans, attended the assembly. Leicester also ordered the attendance of two knights from each shire, and two citizens and burgesses from each city and borough. That is the origin of the representation of the people. The writs for summoning this parliament are the earliest writs of summons now extant on record. Some historians have contended that earlier instances of representation may be inferred from the facts and documents of history; but the best authorities, and the highest research, have made it manifest that the assembly convened by Simon de Montfort is the first instance of popular representation in parliament.¹

The prelates and barons were summoned by writs in the king's name, as were also the king's council; and by entries on the record it appears that all the sheriffs of England were commanded to cause to come to the king, at London, at the time stated, two of the more lawful and discreet knights of their several counties. It also appears that writs were sent to the cities and boroughs of England, commanding them to send two of the more discreet, lawful, and honest of their citizens and burgesses; and in like manner the barons and bailiffs of the Cinque Ports were required to send four of the more lawful and discreet men of their ports.

¹ "After a long controversy, almost all judicious inquirers seem to have acquiesced in admitting this origin of popular representation." (Hallam's *Middle Ages*, vol. ii. p. 160.)

In these writs the purpose of the attendance is stated to be to treat on the king's affairs, with the king, prelates, and magnates.¹

In this record we find, also, the origin of what afterwards became a settled practice,—that of paying the representatives of the people, wages, or expenses of attending parliament; for a writ is recorded to the sheriff of Yorkshire, commanding that the two knights who should attend the parliament should be paid their reasonable expenses in coming to the parliament, of staying there, and of returning to their own parts; which expenses the sheriff was directed to levy on the community of the county.

When the civil war had terminated, and Henry's authority was restored (which happened after the battle of Evesham, on the 4th of August, 1265, in which Leicester was slain, and the King was released from bondage by his son, Prince Edward), the precedent of Leicester, regarded as an act of usurpation, was discontinued, and was not revived during the remainder of Henry's reign, and the greater part of the following reign; but the great council of prelates and barons went on in its old course.

Edward I. succeeded his father Henry III., on the 16th November, 1272. He held his first Parliament at Westminster, on the 5th April, 1275. The Statute of Westminster was then passed, which consists of fifty-one chapters, and is called "the Acts of King Edward, made at his first Parliament, after his coronation, by his council, and by the

¹ The following is the substance of the three writs:—

"Item mandatum est singulis vicecomitibus per Angliam; quod venire faciant duos milites de legalioribus, probioribus et discretioribus militibus singulorum comitatum, ad regem London', in octab' prædictis, in forma supradicta.

"Item in forma prædicta scribitur civibus Ebor', civibus Lincoln' et ceteris burgis Angliæ, quod mittant in forma prædicta duos de discretioribus, legalioribus et probioribus, tam civibus, quam burgensibus suis.

"Item in forma prædicta mandatum est baronibus, et probis hominibus Quinque Portuum, prout continetur in brevi irrotulato inferius." (Rymer's *Fœdera*, vol. i. p. 449.)

assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm." But a subsequent statute of Edward I.—the Statute of Gloucester—made in the sixth year of his reign, 1278, omits any allusion to the commonalty, stating that the statute was made by the king, calling together the prelates, earls, and barons, and his council. Edward made a nearer approach to the precedent of Leicester in the eighteenth year of his reign, 1290; when writs of election were addressed to the sheriffs, directing them to return two or three knights, to appear at Westminster, with full powers for themselves and the 'communitas' of the shire, to consent to what should be then and there ordained by the earls, barons, and certain other of the 'Proceres' of the kingdom.¹ In 22 Edward I., 1294, similar writs were addressed to the sheriffs, stating that the king intended to have a 'colloquium' (a term used for parliament) with the earls, barons, and other magnates of the kingdom, at Westminster, on the morrow of St. Martin; and ordering the sheriffs to cause two knights to be elected, with full power to consent, for themselves and the 'communitas,' to what should be ordained by the earls, barons, and proceres.²

The duties assigned to the knights in these parliaments were to consent to the ordinances of the earls and barons; but a more complete adoption of the precedent of Leicester soon followed. In 23 Edward I., 1295, writs of election were addressed to all the sheriffs of England, reciting that the king intended to hold a parliament, with the earls, barons and other proceres of the kingdom, for the purpose of providing against the dangers which threatened the kingdom; for which purpose they had been summoned to come to the king on Sunday next after the feast of St. Martin.

¹ Parliamentary Writs and Records (Record Commission edition), vol. i. p. 15.

² *Idem*, p. 20. "Between 49 Henry III. and 18 Edward I. there is no evidence to prove that the members of the House of Commons were present in Parliament; in fact, the records which are extant prove the contrary." (Hardy, on the 'Modus Tenendi Parliamentum,' pref. p. xi.)

The writ then commands the sheriff that he should cause to be elected of his county, two knights; and of every city of the same county, two citizens; and of every borough, two burgesses; and cause them to come to the king at the same time and place; so that the knights should have sufficient power, for themselves and the 'communitas' of the shire; and the citizens and burgesses, for the 'communitas' of their respective cities and boroughs, to do what by common consent should be ordained in the premises.¹ The sheriffs were respectively commanded to have there the names of the several knights, citizens, and burgesses, with their respective writs.²

Thus it appears that this great and important innovation in the constitution of the legislative assembly, was not the result of deliberate and express legal enactment, but rather a spontaneous act of Royal pleasure. It seems to have been a concession to the advancing prosperity and influence of the people, in accordance with a principle set forth in the writs summoning the prelates to the same parliament, "that what concerns all should be approved by all; and that for common dangers remedies should be provided in common."³

¹ Parliamentary Writs and Records, vol. i. p. 22.

² Peers' Report, vol. i. p. 212. In the following year, 1296, there are records of the election of two citizens for London, and for Hereford. In the former, the election was made by the aldermen and four men of every ward, who at the same time grant twenty shillings per diem to the citizens elected, for their expenses in going to and returning from Parliament. In the latter, the election was made in the presence of the custos and aldermen, by "six of the best and most discreet of every ward." (Parliamentary Writs and Records, vol. i.) The wages were afterwards settled at a much lower rate.

³ Feod., vol. i. p. 827. Peers' Report, vol. i. p. 211.

CHAPTER VII.

GROWTH OF PARLIAMENT.

Plantagenet Kings.	{	23 EDWARD I. . . . A.D. 1295 . . .	12 years.
		EDWARD II. 1307 . . .	20 "
		EDWARD III. 1327 . . .	50 "
		RICHARD II. 1377 . . .	22 "
House of Lancaster.	{	HENRY IV. 1399 . . .	14 "
		HENRY V. 1413 . . .	9 "
		HENRY VI. 1422 . . .	39 "
House of York.	{	EDWARD IV. 1461 . . .	22 "
		EDWARD V. 1483	
		RICHARD III. 1483	<hr/> 188 years.

Ancient Records of Parliament.—Statute Rolls.—Parliament Rolls.—Humble position of Citizens and Burgesses.—Legislative power in the King.—Concession as to Taxation.—Judicial Functions of Parliament.—Petitions.—Triers of Petitions.—Opening Parliament.—Proxies.—Origin of Convocation.—Complaint of Grievances.—Aid by Commons alone.—Edward II.—Confederation of Barons.—Ordinances.—Revoked as contrary to authority of Parliament.—Peers of the Land.—Deposition of Edward II.—Edward III.—Advice of Parliament asked and given as to War.—Royal Commission for Tallage repealed.—Separate deliberation and subsequent agreement of Lords and Commons.—No negating power yet appeared.—Taxation by Lords and Commons.—Peers and Commons consult as to Loan.—Commons appointed to frame Petitions into Statutes.—Taxation by Privy Council restrained.—Commons' Complaint of bad Government.—Statutes not according to Petitions.—Commons consulted on Foreign Affairs.—Grievances redressed.—Ordinances illegal.—Dukes first created.—Statutes to be in English.—Concurrence of both Houses not yet settled.—First Impeachment by Commons.—First Speaker.—Commons petition against evil counsellors ; urge the Clergy to submit to Taxation in Parliament.—First Grant of Tonnage and Poundage.—Enfranchisement of

Villeins.—Marquesses created.—Barons by Patent.—The Three Estates of the Realm declared.—House of Lords' exclusive Judicature.—Taxation by Commons, with assent of Lords.—Parliamentary Privilege.—Commons Representatives for the whole Kingdom.—Resistance by Commons to Taxation by Lords.—Settlement of separate deliberation, and ultimate agreement of Lords and Commons.—Commons' Rights as to Preparation of Statutes.—Bills drawn from Petitions.—Constitution of Parliament settled.

THE period of time embraced by this chapter is one hundred and eighty-eight years. In it we shall endeavour to trace the progress of Parliament from the twenty-third year of Edward I., when representatives of the people were first summoned by Royal authority, to the time when the two houses of parliament were constituted and established according to the system which exists at the present day. The law of parliament, or the privileges which the houses have established, and even the forms of their procedure, are little less important to the security of the liberties of the people, than the statutes which have been passed expressly to declare them; and it will be interesting to inquire by what steps, and, as far as the records show, by what course of action, the representatives of the people emerged from the impotent condition in which they at first assembled, and built up the present system of parliamentary privilege and procedure. We shall confine this chapter chiefly to the parliamentary procedure, reserving for the next chapter some notice of the important constitutional statutes passed by parliament, from Magna Charta to the end of the reign of Richard III.

In the reign of Edward I. the history of the constitution becomes more authentic; the public records then beginning to be more ample and complete. From his reign the statute-rolls are in existence. They commence with the Statute of Gloucester, 6 Edward I., 1278, and they are continued down to 8 Edward IV., but with an interruption from the eighth to the twenty-third Henry VI., 1430–1445. They are the records of the statutes made in parliament during that

period.¹ There also exist records of writs of summons to parliament, of peers and prelates, under the appellation of barons; and of writs to the sheriffs of counties for the election of knights, citizens, and burgesses; and there are also, in subsequent years, the sheriffs' returns to such writs; the earliest record of writs of summons for the election of knights, citizens, and burgesses, being the record of 49 Henry III., before described.² There are also the Parliament-rolls, in which are recorded the daily transactions of parliament, on public and private business, the several petitions and bills, with the answers thereto; and, in some instances, the roll contains the statute as drawn up and passed. Petitions and answers are extant as early as 6 Edward I.³

The language of the charters and statutes, to the beginning of the reign of Henry VII., is Latin or French; those of Henry III. are almost entirely in Latin; those of Edward I. indiscriminately Latin or French. The statutes of the first and third years of Henry VII. were in French and English; but from the fourth year of his reign the statutes are, exclusively, English.⁴

We have seen that the parliament, as it existed prior to 23 Edward I., consisted of the spiritual lords and barons; and that it was attended officially by the council of the king. To these were added, at that time, knights, citizens, and burgesses, as representatives of the commons. But the citizens and burgesses, at the commencement of their career, and long after, were in a humble position, as compared with the great lords, or even with the knights. The

¹ After 8 Edward IV. the Statute-roll is not preserved; after 4 Henry VII. it ceased to be made up, and, ultimately, it was succeeded, for practical purposes, by enrolment in Chancery. (Statutes of the Realm, Introd., p. 34.)

² Peers' Report, vol. i. pp. 167-168.

³ The Rolls were superseded by the Journals of the two Houses. Those of the House of Lords commenced 1 Henry VIII.; those of the Commons, in 1 Edward VI. (Statutes of the Realm, Introd.)

⁴ *Idem*. Statutes of the Realm, vol. ii. pp. 5-11.

knights were of the same order as the barons, and they assumed, as the county-members have since always maintained, a higher grade than borough-members. The peers, or "grantz," may have admitted the knights into their consultations, with something like equality, when they exercised their functions as advisers of the crown; but the "gentz de commune" (as the citizens and burgesses are termed in the old rolls) were but little regarded, except when their consent was required to an aid. They were, at that time, actual citizens and burgesses, dwelling in the cities and towns which they represented. No separate house, or place of deliberation, appears to have been provided for them, nor separate duties or functions assigned to them, until long after they were first summoned to parliament. They were often dismissed before the earls and barons, who remained to advise the crown, or to give their assistance and consent in the making of laws. It is from this humble and undefined position that we shall have to trace the rise of the commons into a house of legislature, separate from, but co-ordinate in power and authority with, the spiritual lords and barons; whose assembly, after the separation of the commons, was distinguished as the House of Lords.

The functions of the early parliaments, however, were chiefly vested in the king and his council; for even the peers had little originaive power in legislation, although their assent was necessary to legislation for general purposes. But a statute or charter, granted by Edward I. in the twenty-fifth year of his reign,—two years after he had summoned the commons to parliament,¹—restricted the power of the king in legislating for taxation; and, in effect, restored the provisions which Magna Charta had made for consulting the great council. He granted to the lords spiritual and temporal, and to all the commonalty of the land, that "for no business he would take any aids, tasks, nor prises but by the *common assent of the realm*, and for the common profit thereof, saving the ancient aids and prises due

¹ 25 Edward I. cap. 6 (1297).

and accustomed." By this statute the commons, as well as the lords, acquired the right to be consulted on laws imposing taxation on the people; and no such law could afterwards be made without their consent. The exceptions referred to were the feudal aids, and prises of wines and merchandise at the ports, settled by ancient custom. It left to parliament all other taxation, which was usually made by granting a tenth or fifteenth, or other proportionable part of every man's movables; or by subsidies, which were a tax on land and movables; and sometimes even by votes of actual movables, such as wool, in kind.

The interference of parliament was sought in public and in private matters by petitions to the king. "Its functions (says Palgrave) were not only legislative, they were also judicial. It was the king's great and extraordinary court of justice, in which the complaints of the commonwealth or any part of it, or of individuals, might be discussed or heard; and in which the king was to grant redress when the courts were unable, or refused; and frequent parliaments were required, because justice could not be administered without these assemblies."¹ Petitions of a public nature were dealt with by parliament in its legislative capacity; those of a private nature were decided upon and announced in parliament by persons specially appointed for the purpose, called Triers of Petitions, who were usually the chancellor, judges, and other law members of the king's council, without any interference of the general body of lords and commons.² The petitions were entered upon the parliament-rolls, with the answers thereto; and to petitions of a public nature the king's assent was added, "Le Roy le veut,"—"the King wills it so." The petition then acquired the force of law, and was entered on the statute-roll; and, after-

¹ Essay on the Original Authority of the King's Council, by Sir F. Palgrave.

² Peers' Report, vol. i. p. 245. Triers of Petitions are now formally appointed by the House of Lords at the opening of every parliament, although their functions have long ago ceased.

wards, the tenour of it was affixed to proclamation writs, directed to the several sheriffs, commanding them to proclaim the statute as law, in their several counties,—a ceremony, however, not essential to the validity of the law.

The rolls of parliament, held at Westminster on the Sunday after the Feast of St. Mathias, 33 Edward I., afford an instance of the course of proceeding with regard to petitions. The entry purports that it was ordained by the King that Sir Gilbert de Roubiny, Master Johan de Caam, Sir Johan de Kirkeby, and Master Johan de Bussh, should receive all the petitions to be delivered at the then next parliament; and upon this, proclamation was made by the king's command, in the great hall of Westminster, in the Chancery, and before the justices of the Bench, at the Exchequer, in the Guildhall, London, and in Westcheap, for delivering of petitions accordingly before a certain day.¹ In a later parliament, held in the sixth of Edward III., it is explained that the petitions were not received and answered at that parliament, because the prelates "*et autres grantz*," and also "*gentz de ley*," who could try and answer such petitions, were not come to parliament.²

It was a very early practice to declare, at the opening of parliament, the purposes for which it was assembled; and also to open parliament (as we now style it) by commission. An early instance appears on the roll of the parliament held at Carlisle, in the thirty-fifth of Edward I. The king remained at Lanercost, and sent to Carlisle the bishop of Lichfield and Coventry, his treasurer, and Henry de Lacy, Earl of Lincoln, who were authorized by letters-patent, entered on the roll in the French language, to address the parliament in the king's name.³ But if the king were present, he named a person to address the parliament without a commission. On the rolls of the parliament of 9 Edward II., it appears that, the king being present, the causes of summoning were declared by William Inge, a justice of the

¹ Rotuli Parliamentorum, 33 Edward I.

² Rot. Parl., Edward III., p. 67.

³ *Idem*.

Common Bench.¹ It was usual (especially for persons in holy orders) to preface the speech with a text from Scripture, applicable to the intended subject.

Voting by proxy came early into practice; but at first the privilege appears to have belonged only to the bishops and clergy, and not, as now, also to the temporal lords. On the roll of the parliament of 35 Edward I., is a list of the procurators or proxies sent by the bishops and abbots to the parliament at Carlisle. Procurators were not then necessarily persons entitled to sit in parliament in their own right; for all the procurators in the instance given were rectors, canons, or clergymen, except the procurator for the Bishop of St. David's, and he was a knight. The Abbot of Combe sent no proxy, but, instead thereof, his letters-patent, by which he promised that he would hold himself bound by and grateful for anything which the King in the said parliament should profitably decree to be ordained.²

The clergy at this time would not submit to be taxed by the laity in parliament. The popes pretended that all attempts of laymen, without their permission, to impose taxes on the clergy, were derogatory to the authority of the Apostolic See. Pope Boniface, by a Bull, dated in 24 Edward I., 1296, prohibited payment by the clergy of any such taxes, either on their own goods, or on the goods of their respective churches, without the authority of the Apostolic See; and declared that all emperors, kings, princes, or others, who should impose, exact, or receive such taxes or assist therein, should incur the sentence of excommunication; and that those who should pay should incur the same penalty. Such a decree could not be contended against; and it was necessary to form a separate assembly of the clergy. In the writs of summons to parliament, addressed to the archbishops and bishops, there was inserted, whenever the king

¹ Rot. Parl., 9 Edward II., 351 a.

² "Se ratum et gratum habiturum quicquid in dicto Parlamento Rex decreverit salubriter ordinandum." (Rot. Parl., 35 Edward I., p. 190.

required a convention of the clergy, a clause, called from its first words the 'Præmunientes' clause, directing them to summon the deans or heads of chapters, archdeacons, and proctors, to form a representation of the clergy in a separate convention, or convocation.¹

A specimen of the external humility of the Commons is found in a petition which appears on the rolls of parliament in the second year of Edward II., and which is also a very early instance of complaint of grievances. "The good people of the kingdom, who are come hither to parliament, pray our Lord the King that he will, if it please him, have regard to his poor subjects, who are much aggrieved, by reason that they are not governed as they should be; especially as to the articles of the Great Charter; and for this, if it please him, they pray remedy." They then specify their articles of grievance, eleven in number; amongst which the following show the disregard of common justice, and of the laws of Magna Charta that then prevailed. The king's purveyors seize great quantities of victuals without payment; new customs are set on wines, clothing, and other imports; the collectors of the king's dues in towns and fairs take more than is lawful; men are delayed in civil suits by writs of protection; and felons escape punishment by procuring charters of pardon.²

The king promised redress of the grievances set forth in the petition, and the commons granted him an aid of a twenty-fifth of their movables.³ That grant was made by them alone, apart from the lords and knights, and to affect only the property of their own order. In the first year of Edward II. there is a previous proof of the want of unity, at that time, in the several constituent bodies of parliament. The king obtained a grant from the clergy of a fifteenth;

¹ Peerage Rep. vol. i. p. 215.

² See vol. ii. of Middle Ages, by Mr. Hallam, who has translated the whole petition from the Norman-French, p. 172.

³ Rot. Parl., Edward II., App. pp. 443-444. Peers' Report, vol. i. p. 258.

from the earls, barons, and knights, of a twentieth; and from the citizens and burgesses, of a fifteenth of all their movables.¹

In 1312, the fifth year of Edward II., a confederation of the barons, bound by oath to compel the king to expel his favourite, Piers Gaveston, led, like former similar confederations against King John and Henry III., to the advance of constitutional government. A parliament assembled at Westminster, which consisted only of prelates, earls, and barons; citizens and burgesses not having been summoned. It represented in strong terms the disorders produced by the imprudence of the king's conduct; and the king was prevailed upon to issue letters-patent, in which he authorized the prelates, earls, and barons to choose a certain number of their order "to ordain and establish the estate of the king's household, and of his kingdom; so as their ordinances should be made to the honour of God, to the honour and profit of the Church and king, and to the profit of the people, according to right and reason, and the oath which the king had made at his coronation."²

The Ordainers (as the peers appointed were called) made certain ordinances, which were confirmed by the king's letters-patent. They also appear on the parliament-roll, in the form of charters from the king, which was, as we have seen, the usual mode of granting concessions of the royal prerogatives. Although the ordinances were annulled after Edward recovered his power, by a statute passed in the fifteenth year of his reign, yet some of the ordinances—especially those which here follow—could not fail to leave their impression as constitutional principles, although modified in modern times by the effect of our system of parliamentary government:—

"The king should not go out of his kingdom, or make war against any one, without the common consent of the baronage. And if the king should make war against any,

¹ Pryne, vol. ii. pp. 6–8. Peers' Report, vol. i. p. 256.

² Rot. Parl., 5 Edward II., p. 281. Peers' Report, vol. i. p. 259.

or go out of the kingdom, by assent of his baronage, and it should be necessary to appoint a guardian of the realm, such guardian ought to be appointed by common consent of the baronage in parliament.

“No new customs or maletolts, or enhancement of the old, should be taken of merchants against the Great Charter, the franchises of the city of London, and without the assent of the baronage. The king should make the chancellor, chief justices, treasurer, chancellor and chief baron of the Exchequer (and several other specified officers), by the advice of the baronage in parliament; and if it should be necessary to appoint any such officers when there was no parliament, the king should do it by the advice of those about him, until there should be a parliament.

“The king should hold a parliament once in every year, or twice if there should be need, and in convenient places; and in those places, pleas that have been delayed should be recorded and determined; and bills should be delivered and ended in parliament according to law and reason.

“Money should not be altered without great occasion, and then by the common advice of the baronage in parliament.”¹

The ordinances were the act of a parliament to which the commons were not summoned; and in referring to the advice and consent of the baronage as alone necessary, they showed a disregard of acknowledged principles. But this irregularity did not long remain unredressed. The king, in the fifteenth year of his reign, recalled the Despencers, raised an army, and recovered his liberty of action, by the defeat and death of the Earl of Lancaster, in a battle fought at Burton-upon-Trent. He afterwards called a parliament, at which the commons attended, and a statute was passed which re-asserted, not only the authority of the king, but the joint authority of the lords and commons. It declared that “all manner of ordinances or provisions made by sub-

¹ Rot. Parl., 5 Edward II. Statutes of the Realm, vol. i. pp. 157, 158. Peers' Report, vol. i. p. 259.

jects against the power or estate of the king, or against the estate of the Crown, shall be void, and of no avail or force whatever." The statute concludes with a declaration of the proper authority in such matters, namely :—

"But the matters which are to be established for the estate of our lord the king, and of his heirs, and for the estate of the realm, and of the people, shall be treated, accorded, and established in parliaments by our lord the king; and by the assent of the prelates, earls and barons, and the commonalty of the realm; according as it hath been heretofore accustomed."¹

These comprehensive terms left no room for doubt, that all matters which were the subject of legislation, and not taxation merely, were under the control of parliament so constituted; and that no other power had authority to change the law of the land.

The earls and barons first obtained the appellation of 'peers of the land' in this reign. It appears in an instrument by which the Despenchers, father and son, favourites of Edward II., were exiled from the realm in the fourteenth year of his reign. The prelates, although parties to that instrument, were not included in the appellation.²

The parliament exercised the highest and extreme power against monarchy, by deposing King Edward II. In 1327, and the twentieth year of his reign, his queen Isabella, and her son, afterwards Edward III., with armed men, landed at Harwich from Flanders, and were joined by several earls, barons, and prelates, with the object of removing from the king his favourites the Despenchers. The king fled to and was captured in Wales. The great seal was taken from him, and was used to summon a parliament in the king's name; at which articles were exhibited against him, accusing him of inability to govern, being led and governed by others, who gave him evil counsel,—of neglect of the business of the realm, and disregard of his coronation oath. He was therefore deposed; but he was prevailed upon formally to

¹ 15 Edw. II., Statutes of the Realm, A.D. 1322. ² *Idem*, vol. i. p. 181.

resign the crown to his son. The parliament renounced their homage and fealty; the high steward broke his staff, and declared all the king's officers discharged from his service, as if the king were actually dead.¹

Edward III. was but fourteen years old when he was proclaimed king in 1326. The parliament which deposed his father was continued for a month, during which the king was sworn, and guardians were appointed to act during his minority. Many important principles of constitutional government were established in his reign. Parliament was frequently consulted on foreign affairs. At the parliament which met in 1332 (7 Edward III.), the chancellor announced that the king had received a message from the king of France to join an expedition to the Holy land, and the king desired the advice of parliament whether it was proper to join this expedition or not. He also required the advice of parliament how peace might be kept, and rioters be chastised and restrained from their wickedness. The Archbishop of Canterbury and the proctors of the clergy withdrew, because it did not properly belong to their function to be present at criminal debates.²

Another parliament was called in the same year. The Bishop of Winchester stated that it had been summoned for the affairs of Ireland, to which the king had intended to go, to stop the progress of the rebels; and thereupon the prelates, earls, and deacons, "*et autres grantz du parlement,*" were charged to advise the king. The parliament advised the king to send troops and money to Ireland, and proceeded to grant an aid to support their advice; the prelates by themselves, the earls and barons by themselves, and the knights of counties by themselves. It is expressed to be given, "because the king could not do the things proposed without being aided by his people, therefore the said pre-

¹ Parliamentary or Constitutional History of England, 2nd edition, 1772, vol. i. p. 222. This will be the Parliamentary History referred to, unless special reference be made to another.

² *Idem*, 221.

lates, earls and barons, and the knights of the counties, "et tote la Cõe," granted to the king the fifteenth penny, to be levied of the "coâlte." And the king, at the request of the same, in ease of his people, granted that the commissions lately made to certain persons assigned to set tallages on cities, towns, and desmesnes throughout England, should be immediately repealed; and that in time to come he would not set such tallage, except as it hath been done in the time of his ancestors, and as he might lawfully do.¹

On the third day of the same parliament, Le Scrop, on the part of the king, demanded the advice of the "grantz" (prelates and barons), and also of the knights, whether the king should remain until the business of the parliament should be finished, or immediately go into the north. They advised that the king should immediately go. In this proceeding the representatives of the cities and boroughs seem to have borne no part.²

The business of the parliament having been adjourned in consequence of the king's absence, it met at York, in December, 1332. In this parliament we find the "Gentz de la Cõe," or the representatives of cities and boroughs, treated with more consideration; and we perceive something like an approach to deliberation in separate houses, and subsequent concurrence. Le Scrop stated that the parliament was summoned to have the advice of the king's good people and lieges of his kingdom, prelates, and others, on the affairs of Scotland; and he charged the several orders, including

¹ Rot. Parl., Edward III., p. 66. Peers' Report, vol. i. p. 304.

² Rot. Parl., Edward III., App. p. 446. Peers' Report, vol. i. p. 306. Instances of the kings or their ministers consulting the parliament on peace or war (matters which belong to the executive power) might be given in every successive reign, from Edward I. to Henry VIII. These will be found collected in a treatise on the 'Antiquity and Dignity of Parliaments,' written by Sir Robert Cotton, printed in 1679, to prove "that the Kings of England have been pleased usually to consult, in the Great Council, of marriage, peace, and war, with their Peers and Commons in Parliament." It will be found in the Harleian Miscellany, vol. viii. p. 216.

the "Gentz de la Cõe," that they should give their advice. It is then recorded that the prelates with the clergy by themselves, the earls and barons by themselves, and "Chivalers des Countez et Gentz de la Cõe" by themselves, treated of the business till the Friday following; and then the prelates by themselves, the earls and barons by themselves, the knights of the counties by themselves, and then all in common, gave an answer to the king that, without the assistance of several prelates and other grantz who were not present, they did not dare to advise the king; and they requested him to continue the parliament to the octaves of St. Hilary, and to charge the absent prelates and grantz to be at York at that time, to which the king agreed.¹

But there had not yet appeared in the several constituent parts of the parliament any trace of the power subsequently acquired of negativing the deliberations and resolutions of each other; on the contrary, it appears that with respect to taxation, which was the principal subject considered in the early parliaments, and for a long time the only one in which the representatives of the people were allowed to interfere, each order in parliament considered the question with reference only to its own community and its interests; and they frequently differed in the ratio in which they submitted to be taxed. A curious result of such distinct and independent deliberation appears on the rolls of a parliament held in 1339 (13 Edward III.). The grantz, or the earls and barons, gave their answer in writing that they would give the king the tenth garb of corn of all sorts, of their demesne lands (except the lands of their bondsmen), the tenth fleece, and the tenth lamb of the next year, to be paid in two years; but they introduced their grievances, and stipulated for the abolition of the maletolt, or illegal custom of wool,—that it be no more levied; and that the wardship of lands which should come to the king's hands by the nonage of heirs should be delivered to the nearest in blood of the heir; com-

¹ Rot. Parl., Edward III., p. 67. Peers' Report, vol. i. p. 306.

pensating the king for the loss of the privileges of heirship. "Ceux de la commune" gave their answer in writing, describing themselves as "Les Gentz q sount cy a Parlement pur la Commune," that they dared not give their assent to so great an aid as was required, till they had consulted and advised with the commons of their countries (their constituents); and they desired another parliament to be summoned at a future day; and in the meantime they would return to their countries, and do their utmost to obtain for the king a proper aid. They also complained of several grievances; and made a request that the most esteemed knights of counties should be elected, not being a sheriff or other officer. It was agreed that a new parliament should be assembled, and that two knights, girt with swords, from every county should be elected.¹

Various instances occur in subsequent parliaments of separate grants by the peers and commons; by the latter especially, made upon condition of some concessions. In 1346 (20 Edward III.) the commons granted a fifteenth, but presented a petition of grievances, complaining of commissions issued to array gentlemen-at-arms, hobelers (light cavalry), and archers, according to the value of the lands, or to pay a composition in lieu of such array; of victuals and subsistence for the king's horses, required of them without payment; and of a custom of forty "souldz" for every sack of wool; all which were levied without assent or grant in parliament.²

At a parliament held in 13 Edward III., the Peers being advised that it was necessary to borrow immediately a large sum of money for the navy, for the defence of the kingdom, they demanded of the commons how they would avoid the danger to which the country was exposed. After long treaty the commons answered that they would vouch to the king for 2,500 sacks of wool, whereon to borrow money immediately; and that if the conditions they had proposed were

¹ Rot. Parl., Edward III., p. 103. Peers' Report, vol. i. pp. 308-309.

² Rot. Parl. Edward III., p. 160. Peers' Report, vol. i. p. 318.

agreed to by the king, they would raise the grant to 30,000 sacks.¹

At a parliament held in 1340 (14 Edward III.), persons were assigned to despatch the petitions, and form them into statutes. These consisted of prelates and barons, with several judges (not barons), and twelve knights of counties whom the commons selected; and it was agreed that six citizens and burgesses should be associated with them to despatch the business. This seems to have been an innovation, and a gradual advance in power by the commons.²

In 1348 (22 Edward III.), upon application for an aid, the commons complained of the various charges put upon them by the king's council without their assent. But they granted to the king a fifteenth, to be levied in three years, upon condition that "thenceforth no imposition, tallage, or charge by way of loan, nor in any other manner, should be put by the Privy Council of the king, without the grant and assent of the commons in parliament; and they required these conditions, and the manner of the grant, expressed in letters-patent under the great seal, to be sent to all the counties of England, without fee.³

In a parliament held at Westminster, in 1348 (22 Edward III.), the commons prayed that the petitions delivered by them in the last parliament, and jointly answered and assented to by the king and peers, should be kept; and that by no bill delivered in this parliament in name of the commons and others, the answer before granted should be changed, for the commons avowed no such bill, if any should have been delivered in parliament. This is a complaint that the bills founded on their petitions were not in correspondence with what had been originally arranged,—proof that the commons' authority, when they had left the parliament, was sometimes superseded.⁴

¹ Rot. Parl., Edward III. Peers' Report, vol. i. p. 311.

² Rot. Parl., Edward III., p. 112. Peers' Report, vol. i. p. 311.

³ Rot. Parl., Edward III., vol. ii. p. 200. Peers' Report, vol. i. p. 320.

⁴ Rot. Parl., Edward III., vol. ii. p. 200. Peers' Report, vol. i. p. 320.

In 1350 (25 Edward III.) the commons seem to have increased in importance, and to have undertaken a larger scope of inquiry and jurisdiction. They complained of the distress of the country, the dearness of corn, and the want of cultivation of the land, and that commissions had issued to take corn and other victuals; and they assert the principle, that no such charges ought to be made without the assent of parliament, against the statute for that purpose; and prayed that such charges and commissions should be recalled. The commons also complained of a levy of forty shillings on every sack of wool exported. And here they show some rudimentary knowledge of political economy; for they say, that, although granted and paid by the merchants, it really was a burden on the people.¹

These frequent complaints seem to have produced their effect, for at another parliament held in 1350 (25 Edward III.), the chief justice, in opening the parliament, addressed himself principally to the commons, to obtain aids for the king's necessities. He proposed that twenty-four or thirty of their body should go to the king in the Painted Chamber, and that the king would send some 'des grantz' to confer with them; that the rest should assemble in the Chapter House, where their fellows should report to them. The commons did not assent to this, but the whole body came before the prince (the king's son), and 'autres grantz,' on a subsequent day. The state of affairs of France was submitted to them, and they were desired to advise the king what should be done; and if they had any petition of grievances, or for amendment of laws, to offer them.

The commons presented the king a roll, granting an aid, accompanied by their conditions, which were that the commons' petitions should be granted, confirmed, and sealed before the departure of the parliament; that no persons should be required to make loans against their will; for that was against reason and the franchise of the land; and that restitution of such loans should be made. These and

¹ Rot. Parl., Edward III., vol. ii. p. 225. Peers' Report, vol. i. p. 321.

some other conditions relating to the feudal tenure, were acceded to by the king.¹

In 1353 (27 Edward III.) a great council assembled, to which the ordinance of the staple was promulgated. It was attended by one knight from each county, and citizens and burgesses. The commons stated, that inasmuch as the assembly was not a parliament, and its decrees merely ordinances, the latter required confirmation, or, as it was termed, to be rehearsed in parliament, and to be entered on its rolls. That was accordingly done at a parliament held in the following year, at which the chief justice, in the presence of the king, stated what had occurred in the council; and that the king had summoned the parliament, that the ordinances, if approved, might be made a perpetual statute. The commons having considered the ordinances, approved of them, and desired that they should be made into a statute.²

At the close of the parliament in 1362 (36 Edward III.), is an entry that the king, having been blessed with several sons, would increase their names and honours; and he created his son Lionel, Duke of Clarence, his son John, Duke of Lancaster, and his son Edward, Earl of Cambridge; and he gave to each of them a charter.³

At the close of the same parliament, the mischief arising from the use of the French language in the statutes and law proceedings was acknowledged; and the king, with the assent of the lords and commons, willed that all proceedings should be in the English language.⁴

In 1372 (46 Edward III.) we find proof that the principle of the concurrence of both houses in legislation was not yet acknowledged as invariable. Leave was given to the knights of counties to depart, and sue their writs for expenses, and

¹ Rot. Parl., Edward III., p. 227. Peers' Report, vol. i. pp. 321, 322.

² Rot. Parl., 28 Edward III., p. 254. Peers' Report, vol. i. p. 325.

³ Rot. Parl., 36 Edward III., p. 273. Peers' Report, vol. i. p. 236. The title of Duke was first conferred by Edward III. upon his son Edward the Black Prince, whom he created Duke of Cornwall.

⁴ Rot. Parl., Edward III., p. 310. Peers' Report, vol. i. p. 329.

they departed accordingly. But the citizens and burgesses were ordered to remain; and they were prevailed upon to grant to the king a continuation, for a year, of an aid granted in a former year, arising from a duty on wines and merchandise imported. This duty being payable by merchants,—inhabitants of cities and towns,—was, it would seem, assumed to affect that portion of the community only; the knights and their county constituents not being concerned in it.¹

The rolls of a parliament held in 1376 (50 Edward III.) show that the commons had now begun to feel their importance. They had for several parliaments sat separately from the lords in the chapter-house of Westminster Abbey. The king had called this parliament to take order for the maintenance of the war with France. The commons refer to their readiness to assist the king; yet if he had always had about him loyal counsellors, he would not now have needed to have charged his subjects. They said also that the realm had been impoverished for the profit of persons about the king; and if he would do justice on them, he might be so rich as to be able to maintain his wars without any great charge to the commons. They framed articles of impeachment against Richard Lyon, a merchant of London, and farmer of the king's subsidy, and the Lord Latimer (one of the king's councillors), his confederate, for certain abuses; one of which was, bargaining with the king's debtors for their debts, and procuring the king to pay them in full. They were imprisoned and disfranchised, and rendered incapable of bearing any office under the king, or to approach his council or court, suffering also forfeiture of their goods and chattels. This is the first instance of impeachment by the commons.²

On the rolls of the parliament of 1377 (51 Edward III.) is found the first entry of a Speaker, expressly named as

¹ Rot. Parl., Edward III., vol. ii. p. 310. Peers' Report, vol. i. p. 329.

² Rot. Parl., Edward III., vol. ii. pp. 321–330.

such,—Sir Thomas Hungerford, knight, called in the record “Mons^r Thomas de Hungerford, Chevaler, qi avoit les paroles pur les Communes d’Engleterre, en cest Parliament.”¹

RICHARD II., son of the Black Prince, succeeded his grandfather in 1377, being eleven years of age. A Parliament was called in August, and Sir Peres de la Mare was appointed Speaker of the House of Commons; and guardians were appointed for the king.

The commons prayed the king, that because the late King Edward was guided by evil counsellors, as had been authentically proved, they might be removed from all the king’s councils; and that other fit persons might be put in their places. They also petitioned that, during the king’s minority, the chancellor, the high-treasurer, the chief justices, and other high officers, should be made in parliament.²

In 1380 (4 Richard II.) the commons attempted to make the clergy subject to taxation in parliament. They proposed that if the clergy would support a third of the charge, they would grant £100,000; and they suggested that the clergy should hasten the meeting of their convocation, and take upon them the charge of thirty thousand marks. The clergy answered, that their grant was never made in parliament, nor ought to be; and that the laity ought not to, nor could, bind the clergy; and the clergy ought not to, nor could, bind the laity. The clergy prayed the king to preserve the liberty of Holy Church; and the commons were obliged to confine their taxation to the laity only; granting a poll-tax on all the laity, males and females, of the age of fifteen years, very beggars only excepted. This grant appears on the rolls as made by the lords and commons, not mentioning the prelates.³

In this reign is found the first grant of tonnage and poundage. The statute which granted it⁴ states that upon the

¹ Rot. Parl., 51 Edward III., vol. ii. p. 374.

² Rot. Parl., Richard II., vol. iii. pp. 1–7.

³ Rot. Parl., Richard II., vol. iii. p. 98. Peers’ Report, vol. i. p. 339.

⁴ 5 Richard II., Statute 2, cap. iii., 1381.

proffer made in parliament by the mariners of the West, to make an army on the sea, to endure for two years, the lords and commons granted to the king a subsidy of two shillings, to take of every tun of wine to be brought within the realm of England; and also sixpence of the pound of all manner of merchandise to be brought out and coming within the realm,—that is to say, of all manner of woollen cloths, as of all other merchandises, except wools, leather, and woollfells, over the customs and subsidies thereof due before this grant, for two years; so always the money be wholly applied upon the safe-keeping of the sea, and no part elsewhere.

The insurrection in 1381, of the lower orders, under Wat Tyler, was the principal business before the parliament of 5 Richard II. The king had, when under the influence of the tumult, granted letters-patent, enfranchising the villeins to a considerable extent. He submitted to the parliament, whether he should repeal the letters-patent, or complete the enfranchisement and manumission of the villeins. The lords and commons were unanimous for the repeal of the letters-patent, on the ground that the manumission was in disinherison of their rights; but the commons made a remonstrance against the conduct of the king, as the cause of the popular commotions, which appears on the rolls of parliament. They say, “that unless the administration of the kingdom were speedily reformed; the kingdom itself would be utterly lost, and ruined for ever.” They complain of defects in the administration, as well about the king’s person and his household, as in his courts of justice;—of oppression by the king’s purveyors and others, who pay nothing for what they take, whereby and by subsidies and tallages raised upon them, and by the maintainers of suits, they are reduced to greater poverty and discomfort than ever they were before. “And to speak the real truth, these injuries lately done to the poorer commons, more than ever they suffered before, caused them to rise, and to commit the mischief done in their late riot.” They pray the king, and the noble peers of the realm now assembled in parliament, to provide remedy and amend-

ment; removing, as soon as they can be detected, evil ministers and counsellors, and putting in their stead the best and most sufficient.”¹

A parliament met at Westminster in 1383, 6 Richard II., which was called upon to advise the king, whether he should go in person to the relief of the town of Ghent, in danger from the armies of the King of France; and if they advised the king to go, how to provide for such an expedition. The commons consulted together two or three days; but finding it, as they said, so great, and so highly affecting the king's person, they prayed his majesty to grant them certain lords, named by themselves, to treat with them about it. The peers whom the commons named, attended. This seems an approach to a conference between the two houses; but the rolls mention that “it was, and ought to be, in the election of the king, to assign such bishops and lords as he should think fit.”²

Richard II. introduced the title of Marquis, as an order of nobility. Robert de Vere, Earl of Oxford, was created by letters-patent Marquis of Dublin, in the eighth year of the king's reign. Subsequently, in the eleventh year of his reign, he created John Beuchamp, of Holt, a baron, by letters-patent. This is supposed to be the first creation of a baron by letters-patent. Prior to that time the peers enjoyed their titles and their seats in parliament by prescription, in respect of their baronial lands; or as having been summoned to parliament by the king's writ. The creation by letters-patent had the effect of confining the title, in its descent, to such heirs as were specified in the patent.³

At the Parliament which met in 1386 (10 Richard II.),

¹ Rot. Parl., Richard II., p. 100. From this time we find little more of the villeins. Their manumission required neither the letters-patent of the king, nor an act of the parliament. The lords relaxed and gradually abandoned their right to their services; and when that was given up, the villeins were not distinguished, in condition, from their free fellow-subjects.

² Rot. Parl., 6 Richard II., p. 2.

³ Peers' Report, vol. i. p. 342.

the commons impeached Michael de la Pole, Earl of Suffolk, the Lord Chancellor. Articles of impeachment were drawn up by the commons, and presented to the king and lords, as the supreme judicial tribunal, in the parliament-chamber. The king resented the impeachment, and withdrew to his palace at Eltham; but the commons were not intimidated. They resolved "that they neither could, nor by any means would, proceed in any business of parliament, or despatch so much as the least article of it, till the king should come and show himself in person amongst them, and remove Michael de la Pole from his office." The king invited them to send him forty of their members; but they, fearing treachery, sent a remonstrance to the king, by the hands of certain peers. They said "that we have it settled and confirmed in our ancient constitution, that the king ought to assemble the parliament once a year. And that if the king will estrange himself from parliament, and be absent forty days, it shall be lawful for them to return to their countries." Other messages passed, after which the king yielded, and removed Pole from his office of chancellor. The commons proceeded with their impeachment; the earl was arrested, and was sent close prisoner to Windsor Castle, but was soon afterwards released by the king.¹

The parliament closed this reign, and exercised the extreme power of government, by the removal of Richard II. from the throne, and the election of Henry, Duke of Lancaster, to succeed him as king. The rolls of parliament describe the proceedings at great length;—the king's renunciation of the throne, for causes of inability and insufficiency by himself confessed; his absolution of the people from all allegiance, and his recommendation of the Duke of Lancaster as his successor. The parliament pronounced sentence of

¹ Parl. Hist., vol. i. pp. 417–425. Rot. Parl., 10 Richard II. The commons impeached several other persons in this parliament—a proof of their rising energy and power. The lords, as the supreme judicial tribunal, have continued to the present time to be the judges, in cases of impeachment by the commons.

deposition against him, and Henry claimed the vacant throne. The lords spiritual and temporal, and commons, as the three estates of the realm, accepted Henry as king, he disclaiming all right by conquest. The justices and other officers of state were sworn into their offices, and proclamation was made for his coronation. Procurators announced to Richard their acceptance of his resignation and his deposition; and renounced and gave back to him the homage and fealty formerly made to him.¹

In connection with these proceedings a question arose which settled the jurisdiction of the House of Lords, solely, as a judicial court. At a new parliament, summoned by Henry IV., the king came to the parliament, and there, by assent of the lords spiritual and temporal, Richard, late King of England, was adjudged to perpetual imprisonment. To this proceeding the commons were not parties; and on the Monday following, the 3rd of November, the commons made a protestation, and showed to the king, that, as the judgments of parliament belonged solely to the king and the lords,—and not to the commons, unless the king pleased of his special grace to show them such judgments for their case,—that no record should be made in parliament concerning the commons, that they were or should be parties to any judgment given or to be given in parliament. To this it was answered by the Archbishop of Canterbury, by command of the king, that the commons were petitioners and demanders; and that the king and the lords, of all time, had had and ought to have, of right, the judgments in parliament, in manner as the commons had shown; save that in a statute to be made, or in grants and subsidies, or such things to be done for the common profit of the realm, the king would have especially their advice and assent; and this order of proceeding should be holden and kept in all time to come.²

On the rolls of the parliament of 1401 (2 Henry IV.)

¹ Rot. Parl., 1 Henry IV., p. 416, 1399.

² Rot. Parl., Henry IV., p. 427. Peers' Report, vol. i. p. 353.

it appears that on the day on which the parliament was summoned, the knights of counties, citizens of cities, and burgesses of boroughs, were proclaimed by their names in the king's chancery in Westminster Hall, in the presence of the chancellor and steward of the king's household; and on their appearance, the parliament was adjourned to the Friday following, when it was regularly opened in the king's presence. In the speech of the chief justice, by the king's command, the commons were ordered to proceed to the election of their Speaker, and to present him, "*come le manere est,*" on the next day; which was done.¹

In the parliament of 1402 (3 Henry IV.) there is an instance of a grant of a subsidy by the commons, with the assent of the lords. "To the honour of God, and for the great love and affection which the poor commons of your realm of England have for you, their illustrious lord the king, the said poor commons, with the assent of the lords spiritual and temporal, grant to you, their sovereign, the subsidy therein mentioned."²

An attempt was made in the fifth year of Henry IV. (1403) to set up a claim for parliamentary protection or privilege. The commons stated, that according to the custom of the realm, the lords, knights, citizens, and burgesses, coming to parliament by the king's command, were under his especial protection and defence, and ought not to be arrested for debt, account, trespass, or other contract; and they prayed that if any person should so arrest any person coming to parliament, or any of his men, or attempt anything against the custom aforesaid, he should make fine and ransom to the king, and double damages to the party injured. The answer seems to refer the complainants to their legal remedy, it being, that "there was sufficient remedy in the case." But upon a complaint in the same parliament of a violent assault on a servant of one of the knights, a proclamation was ordered, requiring the delinquent to surrender himself to the King's Bench; and if he should not do so, he should be

¹ Rot. Parl., Henry IV., p. 455. ² Rot. Parl., Henry IV., p. 493.

attainted of the fact, and punished by damages, fine, and ransom. This was made the subject of a statute.¹

In the parliament held in 1406 (7 and 8 Henry IV.), a statute, settling the succession of the crown, was ordered to be exemplified under the great seal; and in the exemplification, as entered on the roll, the knights, citizens, and burgesses assembled in parliament are represented as the procurators and attorneys,—“*procuratores et attornati*,”—“of all the counties, cities, and boroughs, and of the whole people of the kingdom (*per universitates et communitates*’), of the same counties, cities, and boroughs; and by the whole people of the same, lawfully constituted, according to the state, manner, and observance of the kingdom.” It was therefore (according to the Peers’ Report) assumed, that by the usage of the kingdom, the knights, citizens, and burgesses, as then elected and returned, although elected and returned only by some, were to be considered as in effect procurators and attorneys for the whole, and had power to act for the whole; and that, for this purpose, they were assembled before the king, and the prelates, and lords, and all who, according to usage, ought to attend the parliament. “This,” it is added, “seems to have been intended as a legislative declaration of what was then considered as the true constitution of the legislature of the kingdom, established by the custom and usage of the kingdom, to give authority to the solemn act for the settlement of the crown.”²

In the parliament held at Gloucester in 1407 (9 Henry IV.), we find the constitution of parliament finally settling into its present form. The king had assembled the lords spiritual and temporal in his presence, and a debate took place between them about the state of the kingdom, and its defence; and on the necessity that the king should have an aid and subsidy. The king demanded of the lords, what aid would be sufficient and requisite; who answered, that, considering the necessity of the king on the one side, and

¹ Rot. Parl., Henry IV., p. 542. *Idem*, p. 358.

² Rot. Parl., Henry IV., p. 575. Peers’ Report, vol. i. p. 355.

the poverty of his people on the other, no less aids could be sufficient than those which they then specify. The king then sent to the commons to cause a certain number of their body to come before the king and the lords; and the commons sent twelve of their companions, to whom the answer given by the lords was communicated. It was the pleasure of the king that the commons should report to their fellows, to the end that they might take the shortest course to comply with the intention of the lords. But the report having been made to the commons, they were greatly disturbed at it, saying and asserting it to be much to the prejudice and derogation of their liberties. The king became alarmed by the intelligence of the displeasure of the commons, and it is stated on the roll that "the king, after he had heard this, not willing that anything should be done at present, or in time to come, that might anywise turn against the liberty of the estate for which they are come to parliament, nor against the liberties of the lords,—wills, and grants, and declares, by the advice and consent of the lords, that it should be lawful *for the lords to commune amongst themselves* in this present parliament, and in every other in time to come, *in absence of the king*, of the state of the realm, and of the remedy necessary for the same. And that in like manner it should be *lawful for the commons*, on their part, *to commune together* of the state and remedy aforesaid. Provided always, that the lords on their part, and the commons on their part, should not make any report to the king of any grant, *by the commons granted, and the lords assented to*, nor of the communications of the said grants, before the *lords and commons should be of one assent* and accord in such matters, and then in manner and form as had been accustomed; that is, *by the mouth of the Speaker of the commons*. The king willing, moreover, by assent of the lords, that the communication made in that parliament, as before stated, should not be drawn into example in time to come, nor turn to the prejudice or derogation of the liberty of the estate for which the commons were then come, neither in that parlia-

ment, nor in any other in time to come; but he willed that himself, and all the estates, should be as free as they were before.”¹

But notwithstanding these solemn arrangements, the rights of the commons were not observed, and the commons, in the parliament held in 1414 (2 Henry V.), made a protestation against statutes passed without their assent. In a petition addressed to the king, they assert it to be their liberty and freedom that there should be no statute nor law made unless they gave thereto their assent; “considering that the commons of your land, which is, and ever hath been, a member of your parliament, are as well *assenters* as petitioners; that from this time forward, on complaint of the commons of any mischief, asking remedy by the mouth of their Speaker, or by written petition, there be no law made thereupon, and engrossed as statute and law, neither by additions nor diminutions, nor by any manner of terms which should change the sentence, and the intent asked, by the Speaker’s mouth, or the petitions given in writing; considering, our sovereign lord, that it is no wise the intent of your commons that if they ask you, by speaking or by writing, two things or three, or as many as they list, but that it ever stand in the freedom of your high regalie to grant which of them that you list, and to deny the remainder.” To this the king’s answer was as follows:—“The king, of his grace especial, granteth that from henceforth nothing be enacted to the petitions of his commons, that be contrary of their asking, whereby they should *be bound without their assent*;—saving always to our liege lord his royal prerogative, to grant and deny what he lists of their petitions and askings aforesaid.”²

Inconveniences and mistakes still continuing to arise from the mode of preparing the statute from the petition and an-

¹ Rot. Parl., 9 Henry IV., p. 610.

² *Idem*, Henry V., p. 22. This is the first instance on the rolls, of the use of the English language. Mr. Hallam has transcribed the petition in its “venerable orthography.” (Middle Ages, vol. ii. p. 222.)

swer, it became the practice, about the end of the reign of Henry VI., and the beginning of that of Edward IV., to reduce the petitions into the form of Acts of Parliament, with a title or heading, to the effect that "a certain petition was exhibited in this parliament, containing in itself the form of an act,"—"quædam petitio exhibita fuit in hoc parlamento formam actus in se continens." That mode continued for many years; but at length the title was disused, and a bill was drawn up, in the first instance, in the form of an act, and brought to the sovereign for his assent.¹

The entry on the roll of 9 Henry IV. seems to have been expressly designed to settle the constitution of parliament; and—notwithstanding occasional disregard of its principle, in form or substance—it established the independent action of the house of lords, apart from the king and the commons, and of the commons apart from the king and the lords; whilst it also required the assent of both lords and commons in any report that should be made to the king. The commons had disclaimed all interference with judicial proceedings in parliament, which they left wholly to the lords. The lords also discontinued their original jurisdiction as the king's Great Council in parliament, retaining only an appellant jurisdiction over the superior courts of justice; for after this time, and indeed from an earlier date, no proceedings of original suits appear on the rolls of parliament. The two houses of parliament had, therefore, acquired the constitutional action that now exists. In other words, they had accomplished the separation of the regal or *executive*, from the *legislative* functions of the government; placing the latter in two distinct houses, representing the aristocratic and democratic classes of the people,—with distinct although similar functions,—with separate power of deliberation and with separate wills; although requiring joint concurrence in any measure that should be presented to the king, and his assent to it, to become a law.

HENRY VI. succeeded his father; but being a minor, the

¹ Ruffhead's Statutes, vol. i., Pref. p. 16.

parliament appointed a protector and council to govern during his minority. He added to the peerage the dignity of *Viscount*. In his reign the Wars of the Roses broke out between the rival houses of York and Lancaster. During Edward IV.'s occupation of the throne the parliament granted to him tonnage and poundage for his life; the act declaring "that tonnage was given for the defence of the realm, and especially for the safeguard and custody of the sea; and poundage for the safeguard and keeping of the sea."¹ In the troubled time of the Wars of the Roses, we do not find any advance or improvement in the parliamentary system.

¹ Stat. 12 Edward IV., cap. 3.

CHAPTER VIII.

CONSTITUTIONAL STATUTE LAW, AND COURTS OF JUSTICE.

FROM MAGNA CHARTA TO HENRY VII.—A.D. 1215-1485.

Courts of Justice.—The King the Fountain of Justice.—Courts of Law.—King's Bench.—Common Pleas.—Exchequer.—Nisi Prius Courts.—Gaol Delivery.—Court of Chancery.—Courts of Appeal.—Inferior Courts.—Sheriffs.—Coroners.—Justices of the Peace.—The Common Law.—Records of the Courts.—Earliest Statutes.—Characteristics of the Legislation of the Middle Ages.—Statutes Civil and Ecclesiastical.—Concerning the Liberty of the Subject.—Taxation without consent of Parliament.—Assembling of Parliament.—Mode of Election and Qualification of Electors of Knights, Citizens, and Burgesses.—Sheriffs.—Justices of the Peace.—Treason.—Benevolences.—The Clergy.—In Restraint of the Pope.—Against Heresy.

IN the last chapter it was proposed to consider the progress of the Statute Law, separately, from the rise and growth of parliamentary procedure and privilege: and we now proceed to review the statutes passed to give effect to the advancing constitution, from Magna Charta to the commencement of the reign of Henry VII. But, before stating the laws, we will briefly advert to the means provided for the administration of the laws,—THE COURTS OF JUSTICE.

According to the theory of the constitution, founded on the ancient practice, the king is the supreme judge of the State. The Anglo-Saxon monarchs, in their progresses through their dominions, regularly discharged in person their judicial functions. "These were of a twofold nature: the ordinary authority of the inferior courts, and the prerogative supremacy over all the inferior tribunals, called into

action when they were unable or unwilling to afford redress.”¹ William the Conqueror, and his successors, exercised these judicial functions at his palace, or *Aula Regis*; which was anciently the chief seat of judicature, both in criminal and civil cases. There, in whatever part of his dominions he for the time dwelt and kept his court, the *Curia Regis* was held, thrice in the year; and there he appeared on the seat of justice, wearing his crown, and arrayed in royal attire. His frequent absence from the kingdom led to the appointment of Justiciars to represent the king’s person, to hold the *Curia Regis*, and to dispense justice on his behalf. To them the sovereign resigned the arduous and responsible duties of a judge; but the theory still subsists, that the king is the fountain of justice, and, through his judges, the administrator of it; although he cannot now resume his functions, which the constitution has committed to the judges, and to them alone.²

We have seen that the inconvenience which arose from the *Curia Regis* following the person of the king wherever he removed, was one of the grievances of *Magna Charta*; which provided that “common pleas shall not follow the king’s court, but shall be holden in some place certain.”³ In consequence of this provision, a new court of justice, called the Common Bench, or COMMON PLEAS, was established, to sit permanently in Westminster Hall, as the place certain. This court consisted of a chief justiciar, or justice, and other justices (in our day four puisne justices), with jurisdiction to hear and determine common pleas, or civil suits, between subject and subject. But as to pleas of the crown, which include all crimes, felonies, and misdemeanours, they continued to be under the exclusive jurisdiction of the *Curia Regis*.

But the *Curia Regis* itself soon afterwards ceased to be dependent on the movements and personal presence of the king; and it subsided into a court of much less pomp and

¹ Palgrave’s *Commonwealth*, cap. 9, *passim*.

² Madox’s *Exchequer*, vol. i. p. 787.

³ See p. 56, *ante*.

circumstance, although retaining all the jurisdiction of the *Curia Regis*; and retaining also the form, in its proceedings, of being held before the king, wherever he should be in England. This court acquired the name of the court of KING'S BENCH, in distinction to the court of Common Bench. It was presided over by a Lord Chief Justice, and (now four) puisne judges; and, in the course of time, that court, although in theory removable with the person of the king, held (as it now holds) its sittings permanently in Westminster Hall.

To the king's EXCHEQUER, also, a court of justice was attached. The Exchequer was instituted by the Normans: it was the king's treasury, receipt, or place where the revenue was paid in, and supervised and managed. At its first institution the chiefs of it were called "*Barones Scaccarii*," and in addition to its ordinary duties, the king and the barons administered justice in civil causes, or common pleas. But when common pleas were separated from the *Curia Regis*, pursuant to *Magna Charta*, the Exchequer also ceased to retain its judicial authority, except in cases which related to the king, or to the residents and ministers of the Exchequer.¹ The Exchequer, however, in process of time, recovered its legal jurisdiction in civil cases, by the fiction of supposing the suitor to be a debtor to the crown, and unable to pay his taxes or duties to the king, because of the default of the defendant, his debtor. Through that fiction, expressed in its writs, it assumed jurisdiction over pleas between subject and subject, concurrently with the courts of King's Bench and Common Pleas. This court is constituted by a Lord Chief Baron and (now) four puisne barons.

These courts rank in the order of King's Bench, Common Pleas, and Exchequer. Their jurisdiction in civil suits is co-ordinate, the selection of the court being left to the suitor.

¹ *Madox's Exchequer*, vol. i. pp. 179, 209, 214. The statute 28 Edward I., cap. 4 (1300), enacted that no common pleas should thenceforth be holden in the Exchequer, contrary to the form of the Great Charter.

But the court of King's Bench has exclusive jurisdiction in matters against the king's peace, or in which the Crown is concerned. It also exercises, by the writ of Mandamus, the power of commanding magistrates, corporations, and other public functionaries, to do their duties,—and, by writs of prohibition, the power of keeping inferior courts within the bounds of their authority. The court of Exchequer continues to have special jurisdiction over revenue litigation.

The judges of these courts were (as they now are) also justices of NISI PRIUS, in which capacity they go twice (or sometimes thrice) in every year, into the several counties of the kingdom, arranged into circuits, to try actions or causes commenced in the three courts of Westminster Hall, before juries of the counties in which the litigating parties dwell;—thus bringing justice home to every man's door. They also, as justices of GAOL-DELIVERY, preside over the trials by jury, of the criminals imprisoned in the gaols of the several counties.

When the office of chief justiciar was abolished by Edward I., as invested with too much power to be entrusted to any subject, the LORD CHANCELLOR became the first law officer of the crown. He is appointed by the delivery of the king's great seal into his custody; whereby he becomes, without writ or patent, an officer of the highest rank, and superior in point of precedency to every temporal lord. Out of the great and various matters entrusted to his judgment and decision the court of Chancery arose, in which the lord chancellor sat alone, administering justice without the intervention of a jury. The nature of the cases brought before him for decision, and the principles upon which he decided, gave to his court the appellation of a court of Equity. The cases were considered either as not within the jurisdiction of the courts of law, or as requiring a species of redress that courts of law could not administer. A large proportion of these were secret trusts and contracts, which the court of Chancery could bring to light by means of its power, not

then possessed by the courts of law, of examining the litigating parties on oath;—of the latter kind were suits concerning apprehended injury to property, which the court of Chancery could restrain before the injury was committed, whilst courts of law could only compensate by damages, after its commission.

The King's Bench is the court of appeal for all the inferior Courts of Record, as it was also for the courts of Common Pleas and Exchequer, when those courts were first instituted. Edward III. commenced an alteration of the system. He established a new court of appeal, called the Exchequer-chamber, for the review of the decisions of the court of Exchequer, declaring by statute that "where a man complaineth of error, made in the process of the Exchequer, the chancellor and treasurer (of the Exchequer) should cause to come before them, in any chamber of council nigh the Exchequer, the record of the process out of the Exchequer, taking to them the justices and other sage persons, as to them seemeth, to be taken."¹ The appeal from the King's Bench was at first only to parliament; but in the reign of Elizabeth a writ of error was allowed, in the case of all actions commenced in the King's Bench, to the court of Exchequer-chamber, consisting of the Justices of the Common Pleas and Barons of the Exchequer, or six of them at the least; but the judgment was not final, and an appeal might be carried from the Exchequer-chamber direct to parliament.² The appeal from the Common Pleas was, by a modern statute,³ transferred from the King's Bench to the Exchequer-chamber; so that, in the present day, the decisions of the three courts are subject to review in the court of Exchequer-chamber; the members of two courts being the judges to review the decisions of the third. From the Exchequer-chamber, and also, since the reign of Charles I., from the court of the Lord Chancellor, there was, as there now is, a final appeal to the House of Lords.

¹ 31 Edward III., stat. 1, cap. 12., A.D. 1357.

² 27 Elizabeth, cap. 8, A.D. 1585. 31 Elizabeth, cap. 1, A.D. 1589.

³ 1 William IV., cap. 72.

Besides these superior courts, there were inferior courts, with limited jurisdiction: the County Court, held once a month before the sheriff or his deputy; Courts-Baron, held generally every three weeks before the stewards of the lords of manors (and other still lower courts), where cases limited to forty shillings in amount were decided by juries taken from the tenants of the manor.

The SHERIFFS were (as they now are) the ministerial officers of the superior courts. They executed the writs for the summoning of the parties and of the juries, and the orders and decrees for the enforcement of the sentences of the courts in criminal, and of their judgments in civil, cases. They had the charge of the gaols, and the custody of all criminals, as well those committed for trial as those convicted; and of all debtors and others committed to prison by the processes or judgments of the civil courts. These duties the sheriff performed as the king's bailiff, or representative of the executive power of the king within his county. In the Saxon times they were the deputies of the eorldermen; but after the Conquest the sheriff (and not the earl, who had his name of dignity from the county) was the first officer of the crown, and ranked above any nobleman within the county. For the preservation of the peace of the county, he was invested with large powers of pursuing and apprehending persons who broke the peace, and of summoning to his aid the *posse comitatús*, or all male persons above fifteen years of age, below the degree of a peer.

The CORONERS were very ancient officers of the crown,—inferior in rank to the sheriff, but associated with him in the duty of preserving the peace of the county, and arresting felons. Edward I. passed a statute that through all shires sufficient men should be chosen to be coroners of the most wise and discreet knights.¹ He also passed a statute to declare of what things a coroner should inquire.² It gives most minute directions for inquiring, by a jury of five or six of the next towns, into cases of murder, persons found slain,

¹ 3 Edward I., cap. 9, 10, A.D. 1275.

² Statute de Officio Coronatoris, 4 Edward I., stat. 2, A.D. 1276.

drowned, or suddenly dead,—and also concerning treasure-trove, rapes, wounds (distinguishing between principals and accessaries), deodands, wrecks of the sea; and the coroner was empowered to take and imprison persons suspected of the death of any man, and to follow him with the hue and cry. The coroner was also (as he now is) the officer for executing the writs of the civil and criminal courts, in cases where the sheriff is a party concerned.

The preservation of the peace of each county, and the administration of justice in small felonies and misdemeanours, were committed to conservators and JUSTICES OF THE PEACE; and in each hundred or parish there was an array of constables and inferior officers, for executing the orders and behests of their superiors, and preserving peace in their respective localities.

When considering the STATUTES of the period under review, we must bear in mind that when Magna Charta was granted there were no statutes in existence. Our statute-book commences with a confirmation of the great charter, of the ninth year of Henry III., by Edward I., in the 25th year of his reign. Before Magna Charta the law was unwritten or common law; and as it was administered by judges dependent on the crown, we may imagine how desirable it was for the people to obtain a written declaration of the law, such as Magna Charta, which they could refer to, as well for the guidance or justification of their conduct, as for the redress of injuries to their persons or property. It must not, however, be supposed that the courts administered justice, on an arbitrary system of law or procedure. The rolls of the Curia Regis, even so early as the reign of Richard I., still exist, and have been published. According to eminent authority, "they show that our jurisprudence had assumed all those characteristics through and by which, greatly as they have been altered from age to age, it is distinguished at the present day." It is added that "these records exhibit, what the world cannot elsewhere show, the judicial system of a great and powerful nation running

parallel in development with the social advancement of the people whom that system ruled.¹

Sir Edward Coke (following Littleton, on whose work his own is a commentary) calls *Magna Charta*, although in form a charter, yet, being granted by assent and authority of parliament, a statute; and remarks that it "is but a confirmation and restitution of common law;" also that "it is the foundation of all the fundamental laws of the realm."² Several of the statutes that follow it in the statute-book have the form of charters, or decrees of the king, and do not purport to have issued from any parliament or assembly. But there are also collections of statutes which, although proceeding from the king as his acts, were the offspring of a council or parliament; and those have received names taken from the places where the parliament assembled from which they issued. The earliest of these is the *Provisiones de Merton*, or statutes made at Merton, in the twentieth year of Henry III.; which purport to have been made at the court assembled for the coronation of the king and Eleanor the queen, and to have been made as well of the archbishops, bishops, earls, and barons, as of the king himself and others. Next is the *Statutum de Marlborough*, in the fifty-second year of Henry III.; which does not mention the nobility by their titles, but probably refers to them as "the more discreet men of the realm, called together, as well of the higher as of the lower estate." In the reign of Edward I. there are similar collections, called the Statutes of Westminster, the Statutes of Gloucester, the Statute of Rutland, the Statute of Acton-Burnell and others.

In selecting from the general body of statutes those which have relation to the Constitution, civil and ecclesiastical, it will be convenient to class them under distinct heads, as follows:³—

¹ *Rotuli Curia Regis*, by Sir F. Palgrave; *Introd.* ii. iii.

² Coke, *Litt.*, lib. 2, s. 108.

³ If my readers should be deterred by this exposition of statute law, I

Civil.

1. Statutes concerning the liberty of the subject.
2. Statutes prohibiting taxation without consent of parliament.
3. Statutes concerning the periodical assembling of parliaments.
4. Statutes regulating the mode of election, and the qualification of the electors of knights, citizens, and burgesses, for the commons' house of parliament.
5. Statutes concerning sheriffs.
6. Statutes concerning justices of the peace.
7. Statute concerning treason.
8. Statute concerning benevolences.

Ecclesiastical.

9. Statutes concerning the clergy.
10. Statutes of provisors, or in restraint of the Pope of Rome.
11. Statutes against heretics.

Under these sections it will be attempted to describe how the Constitution was modified or advanced by statute law, in its progress through the Middle Ages, and contemporaneously with the growth of parliament described in the preceding chapter. From these, together, a sufficient acquaintance may perhaps be obtained of the Constitution as it existed at the opening of the reign of Henry VII., when modern history is considered to commence; and from which

would offer them the authority of Lord Bacon for introducing it. "And here I do desire those into whose hands this work shall fall, to take in good part my long insisting upon the laws that were made, . . . because in my judgment it is some defect even in the best writers of history, that they do not often enough summarily deliver and set down the most memorable laws that passed in the times whereof they write, being indeed the principal acts of peace. For though they may be had in original books of law themselves, yet that informeth not the judgment of kings and counsellors and persons of estate, so well as to see them described and entered in the table and portrait of the times." (Lord Bacon's *History of Henry VII.*, Ellis and Spedding's edition, vol. vi. 97.)

time the subject may be treated more in reference to the individual kings, than was before necessary.

The characteristic of the legislation of the period now in review, is, that it is directed against the power of the crown and its officers; and a striking feature of it is the frequent repetition of enactments of the same tendency, from the difficulty of making the crown submit to laws in restraint or diminution of its prerogative; which it only consented to under the pressure of force or necessity. The same difficulty is observable with respect to the officers of the crown, —the sheriffs, justices, and others, whom the laws continually upbraid with neglect or betrayal of their duties. But in the ecclesiastical legislation, during the same period, the position of the crown was reversed. The king was there the actor, stimulated by the lords and commons, making common cause to reduce the power of the clergy and the Pope; and obliged to resort to a succession of statutes to accomplish their object.

1. *Statutes concerning the Liberty of the Subject.*

These statutes played an important part in the history of the country. They were continually cited by the Puritan party in the house of commons, in the contest with Charles I., and made the foundation of their demands. They are confirmations of the clause in Magna Charta which here precedes them, viz. :—

“No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs; or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either right or justice.¹

“No man from henceforth shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seised into the king’s hands, against the form of the Great Charter, and the law of the land.²

¹ Magna Charta, *ante*, p. 59. ² 5 Edward III., cap. 9, A.D. 1331.

“None shall be taken by petition or suggestion made to the king, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of the law; and if anything be done against the same, it shall be redressed and holden for none.¹

“No man, of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of the law.²

“All they that make suggestions to the king, be sent with the suggestions before the chancellor, treasurer, and his council, and that they there find surety to pursue their suggestions, and incur the same pain that the other should have had if he were attainted, in case that his suggestion be found evil. And that then process of the law be made against them, without being taken or imprisoned against the form of the said charter and other statutes.³

“It is assented and accorded for the good government of the commons, that no man be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land; and if anything from henceforth be done to the contrary, it shall be void in the law and holden for error.”⁴

Thus, at an early period of our constitutional history, we find the liberty of the subject placed on the widest basis. There was no better way of securing it, than by rendering him unassailable, either in person or property, except through the courts of justice, and according to the law of the land. Although these statutes were for a long period and to a

¹ 25 Edward III., stat. 5, cap. 4, A.D. 1350.

² 28 Edward III., cap. 3, A.D. 1354.

³ 37 Edward III., cap. 18, 1363.

⁴ 42 Edward III., cap. 3, A.D. 1368.

great extent disregarded by the kings, who, notwithstanding, claimed and exercised the prerogative of imprisonment, on their own or their council's warrants, yet the knowledge of the existence of these statutes animated the people to maintain their rights, and finally to establish them beyond the power of the prerogative.

2. *Statutes Prohibiting Taxation without Consent of Parliament.*

Statutes declaring that taxation should not be made without the consent of Parliament, make their first appearance in the reign of Edward I. The statutes under this head, like those last mentioned, were continually cited and used in contests with the crown. The commons, in the reign of Edward I., had been introduced as constituent parts of the parliament; but the form of legislation by charters or letters-patent of the king was still frequently retained, and more especially where the proceeding was one in surrender or restraint of the king's prerogative. The first of these is the charter or statute called *Confirmatio Chartarum*, or the confirmation of Magna Charta, and of the Charter of the Forest. It appears in the statute-book, as a statute made at London on the 10th of October, 25 Edward I., 1297.¹ It was the result of a quarrel between Edward and some of his barons, of whom Humphry de Bohun, Earl of Hereford, high constable of England, and Roger Bygot, Earl Mareschal, were the principal. The king required the barons to attend him to France in his wars. Some of the barons excused themselves, and a quarrel ensued. The king, being at the same time pressed by a revolt of the Scots, was forced to conciliate his barons, and they drew up the terms of reconciliation, which were embodied in this statute, passed in a parliament held by Prince Edward, the King's son, in his father's absence; and afterwards confirmed by Edward, the king, under his great seal, at Ghent, in Flanders. Edward, on his return to England, was re-

¹ 25 Edward I., cap. 6, A.D. 1297.

quired by the barons to ratify, in person, the Great Charters, with the additional articles supplied by the *Confirmatio Chartarum*. He tried to evade the ratification, but at length he confirmed them in person in parliament, and the Archbishop of Canterbury pronounced sentence of excommunication on all who should break them. The following clause supplies the article in *Magna Charta*—that no scutage or aid should be imposed, unless by the common council of the kingdom—omitted in the Charter of Henry III. and in the confirmation of it by King Edward I.

“Moreover, we have granted, for us and our heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks, nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed.”

This charter was soon followed by the Statute *DE TALLAGIO NON CONCEDENDO*, by which the king granted that “no tallage or aid shall be taken or levied by us or our heirs in our realm, without the goodwill and assent of archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land.”¹

Edward III. enunciated the same principle in two statutes.

“Item, it is accorded and assented that no man shall be constrained to find men of arms, hoblers, nor archers, other than those which hold by such services, if it be not by common consent and grant made in parliament.”²

“Item, it is accorded and established that no imposition or charge shall be put upon wools, woolfells, and leather, other than the custom and subsidy granted to the king, in no sort, without the assent of the parliament; and if any be, it shall be repealed, and holden for none.”³

¹ 34 Edward I., stat. 4, cap. 1, A.D. 1306.

² Statute of Purveyors, 25 Edward III., stat. 5, cap. 8, A.D. 1350.

³ 45 Edward III., cap. 4, A.D. 1371.

The value attached by our ancestors to these laws will not surprise us, when we consider their effect. It would be but an imperfect view of their importance, to look at them merely as protectors of property from arbitrary taxation. In that view they are invaluable; but it is not, perhaps, too much to say, that to these laws, and the principle involved in them, we owe the free institutions we now possess, and the best guarantee we have for their permanence. They were the means by which our liberties were won. It was soon discovered that consent to taxation might be coupled with the condition of redress of grievances, or extension of liberties; and the commons were not long in possession of the power, before they found its strength, and made use of it. But although the law existed and its principle was admitted, some centuries elapsed before it became fixed and invariable. The weaker monarchs were obliged to regard it, the stronger neglected or evaded it; raising the money they wanted by forced loans or by compulsory gifts, which they called benevolences. It was the ground of the contest between Charles I. and his parliaments; it was disregarded by Cromwell; nor was it permanently established until the Revolution. Yet it flows almost as a corollary from the free system of government which Magna Charta proclaimed, and which the introduction of the representative system confirmed. "The supreme power," says Locke, "cannot take from a man any part of his property without his consent. That would allow him no property at all; for I have no property in that which another can, by right, take from me when he pleases, without my consent. Hence it is a mistake to think that the supreme power of any commonwealth can do what it will, and dispose of the estates of the subject arbitrarily, or take any part of them at pleasure."¹

The Confirmatio Chartarum, besides the provision that taxation could not be imposed without the consent of parliament, enunciated another great principle, defining the object and purpose of taxation,—that it must be for the

¹ Locke on Government.

common profit of the realm ; an admission directly opposed to the prerogative of the kings, who had hitherto considered taxation as exclusively for their own benefit. It is curious to compare the simple and terse language of the ancient charter, with that of the Report of a Committee of the House of Commons which sat in 1828, upon public income and expenditure, when propounding the same principle. "No taxes shall be taken but by the common consent of the realm, and for the common profit thereof," says the ancient charter. The Committee "unequivocally declare their full assent to the principle that no government is justified in taking even the smallest sum of money from the people, unless a case can be clearly established to show that it will be productive of some essential advantage to them, and of one that cannot be obtained at a smaller sacrifice."¹

3. *Statutes ordaining the Periodical Assembling of Parliaments.*

The earliest statutes that laid any obligation on the king to call the parliament together, are found in the reign of Edward III. Before that time, it rested entirely with the king to convene the parliament or not ; and notwithstanding the statutes, the kings—especially those of a more advanced period of our history—claimed freedom of will with regard to the time, as well as the place of assembling parliaments, as their indisputable prerogative. We may again notice the terse as well as unqualified terms in which the earliest statutes proclaimed the law.

"A parliament shall be holden every year once, and more often, if need be."²

"For maintenance of the said articles and statutes, and redress of mischiefs and grievances which daily happen, parliament shall be holden every year, as another time was ordained by statute."³

¹ Report, vol. ii. p. 4.

² 4 Edw. III., cap. 14, A.D. 1330.

³ 36 Edw. III., cap. 10, A.D. 1362.

Edward III. did not convene parliament in strict accordance with these laws, but he did not absolutely disregard them; for in his reign of fifty years, there were thirty-seven years in which a parliament assembled. But it must not be imagined that these statutes were passed with reference to any political desire for annual parliaments: they were intended to ensure an annual session, rather than an annual election; for an eager desire for a seat in parliament did not then exist;—on the contrary, in the following reign, of Richard II., it was found necessary to make a statute “for compelling the attendance of the members of both houses. The king did ‘will and command’ the attendance of all who had the summons, be he archbishop, bishop, prior, duke, earl, baron, banneret, knight of the shire, citizen, or burgess, on pain of being amerced, or otherwise punished; except they could reasonably and honestly excuse themselves to the king.” Punishment was, in the same statute, imposed upon sheriffs who were negligent in making returns of writs to the parliament, or who left out any cities or boroughs, “which be bound, and of old time were wont, to come to the parliament,”—an enactment which seems to imply that a sort of favouritism,—perhaps under the direction of the crown,—was exercised by the sheriffs, by exempting cities and boroughs from returning members, and from the consequent burden of the members’ wages.¹

4. *Statutes which Regulate the Mode of Election, and the Qualifications of the Electors, of Knights, Citizens, and Burgesses.*

These statutes are interesting as the initiatory and progressive steps of the laws of election, and of the qualifications of electors, which continued unchanged, in all material respects, for above four hundred years,—that is, until the Reform Act of 1832. The first statute is in the reign of Henry IV.;² it seems to be directed against the influence

¹ 5 Rich. II., stat. ii. cap. 4, A.D. 1382.

² 7 Henry IV., cap. 15, A.D. 1405.

of the crown. It appears from the preamble, that the commons had made "grievous complaint to the king, of the undue election of the knights of counties, which be sometimes made of affection of sheriffs, and otherwise against the form of the writs." The statute laid down how the elections should be made in future. "At the next county [court] to be holden after the delivery of the writ, proclamation should be made, in the full county, of the day and place of the parliament, and *that all they that be there present*, as well suitors duly summoned for the same cause, as other, shall attend to the election of the knights for the parliament; and then, in the full county, they shall proceed to the election, freely and indifferently, notwithstanding any request or command to the contrary." It is then directed that "the names of the person chosen (*be they present or absent*) shall be written in an indenture, under the seals of all them that did choose them, and tacked to the writ, which should be the sheriff's return to the writ."

That statute had not ordained any penalty against the sheriffs for returns contrary to its provisions, and it was soon afterwards followed by another statute which supplied the omission, and also established a tribunal for trying the validity of the sheriffs' returns. It gave powers to the justices of assize to inquire of such returns in their sessions of assizes; and if it were found by inquest and due examination before the justices, that a sheriff had made a return contrary to the statute, he should incur a penalty of £100, and the knights so unduly returned should lose their wages.¹

The generality of the expression in the statute of the seventh year of Henry IV.,—"All they that be there present,"—in reference to the electors for counties,—appears to have put the right of election on the most popular principle,—not much, if at all, short of universal suffrage,—especially when we consider that the sheriff's county was in the open air, as we may imagine it on Penenden Heath. It is not, however, generally admitted to be a correct infer-

¹ 11 Henry IV., cap. 1, A.D. 1409.

ence from the statute, that the right of election extended beyond the knights, esquires, and freeholders of the county. In the Peers' Report it is observed that "it was apparently intended that the election should be by all the suitors at the county court: *who* were at different times suitors at the county court, and who were at that time suitors, has been a subject of much doubt; but it has generally been admitted that the suitors to the county court were declared by this statute to be the electors of the knights for each county."¹ Mr. Hallam has found great difficulty in making up his mind on the question. "Whoever," he observes, "may have been the original voters for county representatives, the first statute that regulates their election, so far from limiting the privilege to tenants *in capite*, appears to me to place it on a very large and democratical foundation. For (as I rather conceive, though not without much hesitation) not only all freeholders, but all persons whatever present at the county court, were declared or rendered capable of voting for the knight of the shire."²

The election of knights, whether present or absent, was altered by a statute of Henry V., which required that the knights be not chosen unless they be *resident within the shire* on the day of the date of the writ of summons to parliament; and that "the knights and esquires, and others which shall be *choosers* of knights, be also *resident* within the same shires." It also confined the cities and boroughs to the choice of "citizens and burgesses *resiant, dwelling, and free* in the same cities and boroughs, and no other in anywise."³

After the experience of a quarter of a century of the working of the system of election prescribed by the preceding statutes, it was materially altered by a statute in the reign of Henry VI. Its language is very remarkable for the picture it gives of the license of a contested election, according to the then existing system, in the sheriff's county

¹ Peers' Report, vol. i. p. 357.

² Hallam's Middle Ages, vol. ii. ch. 8, p. 242.

³ 1 Henry V., cap. 1, A.D. 1413.

court, held in the open air; and it appears to give great support to the opinion that the electors had then become much more numerous, and included many of inferior position to the knights, esquires, and freeholders. "The elections of knights of shires have now of late been made by very great, outrageous, and excessive number of people dwelling within the counties, of the which most part was of people of small substance and no value,—whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties,—whereby manslaughters, riots, batteries, and divisions among the gentlemen and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided." It was, therefore, declared—that the electors should in future be "people dwelling and resident in the counties, who should have free land or tenement to the value of forty shillings by the year at the least above all charges,—and the elected, or they which shall be chose, shall be dwelling and resident within the same counties,—and such as had the greatest number of them that may expend forty shillings by the year and above, should be returned by the sheriffs knights for the parliament."¹

¹ 8 Henry VI., cap. 7, 1429.—Sir F. Palgrave, referring to the county court being held in the open air, "thinks it not too much to assert that the present political influence of the people is, in great measure, derived from the mode and manner of their meeting. . . . The records exist which show that as the suffrage of the borough belonged to the delegated bodies acting on the part of the community [the burgesses], so the choice of the representative of the county, or rather of the county court, belonged to the magnates, or their delegates, few in number, high in station, and without any commixture of the minor suitors, who continued spectators, until they acquired a deep and general interest in the proceedings of the legislature and in the affairs of the community. They then became loud and active partisans; they were on the spot, they mingled with their superiors, they asserted the same rights; but 'the great, outrageous, and excessive number of people, of small substance and no value,' would never, in the angry words of the statute, 'have pretended to a voice equivalent with the most worthy

The last statute had omitted express mention that the freehold of the chooser must be within the county where he makes his election; and three years afterwards another statute was passed, which, after noticing the omission, declares—that the knights of all counties shall be chosen in every county by people dwelling and resiant in the same, having freeholds of the value of forty shillings by the year, above all charges within the same county.¹

These statutes, modified by a statute² which dispensed with the actual residence of the electors and elected, in their respective counties, cities, and boroughs, continued to regulate the qualifications of the electors down to the time of the Reform Act; and as they were not repealed by that act, as regards county constituencies, they continue in force as the laws which give to freeholders of inheritance the right of voting at the present day.

The statute which settled the system of borough elections, casts very severe reflections on the sheriffs in regard to their conduct, both of county and borough elections. “Now of late divers sheriffs, for their own avail and lucre, have not made due elections of knights, nor good men and true; and with respect as well to knights as to citizens and burgesses, they have returned some who were never chosen, suppressing those who had been actually chosen, sometimes making no returns at all; ‘but the said writs have imbeselled,’ ” making no precepts for the election of citizens and burgesses. It is then ordered “that every sheriff, after the delivery of the writ, shall make his precept to the mayor and bailiff of the cities and boroughs, commanding them to choose for a city a citizen, and for a borough a burgess; and the mayor and bailiff shall return the precept to the sheriffs, with the names of the citizens and burgesses chosen, and the sheriff shall make a good and rightful return of

knights and esquires,’ if the English sheriff had been enabled, like the mayor, to close the door upon the unwelcome intruders.” (Palgrave’s *English Commonwealth*, vol. i. p. 151.)

¹ 10 Henry VI., cap. 2, A.D. 1432.

² 14 George III., cap. 58.

the writ." Additional penalties were imposed on sheriffs who made false returns; and the statute concludes with a declaration, which imposes a sort of landed qualification on the candidates, "that the knights of the shires thereafter to be chosen shall be notable knights of the same counties for which they shall be chosen, or otherwise such notable esquires, gentlemen of the same counties, as shall be able to be knights; and no man to be such knight which standeth in the degree of a yeoman, and under."¹

5. *Statutes concerning Sheriffs.*

The Sheriffs were originally appointed by the king, and frequently for their lives, or for a term of years, or in fee.² Edward I. "granted unto his people that they should have election of their sheriff in every shire (where the shrievalty is not of fee), if they list."³ But his successor, Edward II., "on the complaint of his people of great damage to be done to him, and great oppressions and disheritances to them, by reason of unsufficient sheriffs," instituted a new mode of appointing sheriffs, which is, with little modification, the same that is now in use. "The sheriffs from henceforth shall be assigned by the chancellor, treasurer, barons of the Exchequer, and by the justices, and in the absence of the chancellor, by the treasurer, barons, and justices. And that none shall be sheriff except he have sufficient land within the same shire where he shall be sheriff, to answer the king and his people. And that none that is steward or bailiff to a great lord shall be made sheriff."⁴

Several statutes were passed by Edward III., for the most part directed to the restraint or punishment of the sheriffs for the abuse of their power. The first statute reduced their tenure of office to one year. "Because that some sheriffs have their bailiwicks for term of years of the

¹ 23 Henry VI., cap. 15, A.D. 1444.

² Peers' Report, part 1, p. 135.

³ 28 Edward I., stat. 3, cap. 8, A.D. 1300.

⁴ 9 Edward II., stat. 2, A.D. 1315.

king's grant, and some do so much trust to tarry in their office by procurement, that they be encouraged to do many oppressions to the people, and evil service to the king and his people,—it is established that no sheriff shall tarry in his bailiwick over one year,—and then another convenient shall be ordained in his place, that hath land sufficient in his bailiwick, by the chancellor, treasurer, and chief baron of the Exchequer, taking to them the chief justices of the one bench, and the other, if they be present; and this shall be done yearly on the morrow of All Souls at the Exchequer.”¹

The inefficacy of the statutes at this period of our history, when opposed to the interests of the crown, or of the great men against whose conduct they were directed, is shown by the numerous statutes of confirmation. The law that sheriffs should hold their office for only one year, is repeated twice in the reign of Edward III.; the later statute extending the prohibition to the under-sheriff and sheriff's clerk.²

Another grievance was the subject of a statute in the reign of Henry IV., which required every sheriff to abide in proper person within his bailiwick, and not to let it to farm to any man.³ In the reign of Henry VI. a statute was passed, confirming the previous statutes, and imposing on any sheriff, under-sheriff, or sheriff's clerk (the under-sheriffs and officers in the City of London, and of such counties where the office is inheritable excepted), who should occupy his office contrary to the statutes, a penalty of £200 yearly, as long as he occupieth, contrary to the statutes. In what follows, we find how these statutes were so long evaded:—“Every pardon to be made for such offence, or occupation, or forfeiture of penalties, shall be void,”—and “all patents granting the office for term of years shall be void and of no value, any clause or word of *non obstante* in such patents notwithstanding.”⁴

¹ 14 Edward III., stat. 1, cap. 7, A.D. 1340.

² 28 Edw. III., c. 7, A.D. 1354. 42 Edw. III., c. 9, A.D. 1368.

³ 4 Henry IV., cap. 5, A.D. 1402.

⁴ 13 Henry VI., cap. 8, A.D. 1444.

The grievance must have been severely felt, and obstinately persisted in, to make it necessary to require the crown to submit to an enactment affecting its prerogative of pardon; and taking away another cherished prerogative,—the power of inserting, in its Letters-Patent, a *non-obstante* clause; by which the grants of monopolies and other favours of the crown were rendered valid, notwithstanding (*non obstante*) any statute which forbade them. We shall find that the latter prerogative did not succumb to this attack.

The sheriffs came under great censure for fraudulently levying and paying over the wages of the knights of parliament. A statute of Henry VI. restrains these frauds, and is interesting, as showing the mode by which the parliamentary wages were assessed and levied. The authority of the sheriff was derived from writs issued by the parliament to levy the wages, which amounted in the case of a knight to four shillings a day, and of a citizen and burgess to two shillings a day.¹

“Divers sheriffs, by colour of writs to them directed, to levy the wages of the knights of shires, have levied more money than is due to the knights, and more than they have delivered to them;—keeping and retaining great part of the money to their own use and profit, to their officers and servants, to the great loss of the common people of the counties.” The king, therefore, ordained that the sheriff in the next county court, after the delivery of the writ, should make open proclamation, that the coroner, constables, and bailiffs, and others which would be at the assessing of the wages, should be at the next county, where the sheriff, or under-sheriff, in the presence of them that should come to the same, should “assess every hundred to that assessable by itself,”—in other words, to its own portion of the whole,—so that the whole sum of all the hundreds do not exceed the sum which shall be due to the knights. They shall afterwards, in like manner, assess every village within the hundred to a certain sum, its share of the whole assessed

¹ Rot. Parl., Edw. III., 289, 251.

on the hundred; and the sheriffs, under-sheriffs, and bailiffs should levy no more money than was so assessed.¹

6. *Statutes concerning Justices of the Peace.*

Justices of the peace were first appointed in the reign of Edward III., but they were preceded by conservators of the peace, who, although chosen by the landholders, were finally appointed to their office by the royal writ or commission.² In the reign of Edward III. a statute for declaring "who shall be assigned justices and keepers of the peace,"—enacted that, for the better keeping and maintenance of the peace, the king wills,—that in every county good men and lawful, which be no maintainers of evil, or barretors in the country, shall be assigned to keep the peace.³ This was soon afterwards enforced by another statute, which rendered the justices independent of the power of the sheriffs, who were, *ex officio*, the chief conservators of the peace in their counties, by declaring—that such as be indicted or taken by the keepers of the peace, should not be let to mainprise (bailed) by the sheriffs, nor by none other ministers, if they be not mainpernable by law; but they should be tried by the justices assigned to deliver the gaols.⁴

The next step was to give the justices judicial power over felonies and misdemeanours. "Two or three of the best of reputation in the counties shall be assigned, by the king's commission, keepers of the peace; and with others learned in the law to hear and determine felonies and other trespasses done against the peace, and to inflict punishment reasonably according to law and reason, and the manner of the deed."⁵ It is remarkable that by this act the justices were given the power of inflicting undefined punishment, for all the range of felonies and trespasses.

¹ 23 Henry VI., cap. 11, A.D. 1444.

² Palgrave's English Commonwealth, vol. i. p. 300.

³ 1 Edw. III., stat. 2, c. 16, A.D. 1327.

⁴ 4 Edw. III., cap. 2, A.D. 1330.

⁵ 18 Edw. III., stat. 2, cap. 2, A.D. 1344.

The selection of the justices was altered on several occasions.

A statute of Edward III. declared that the justices should be one lord, and with him three or four of the most worthy in the county, with some learned in the law.¹ In the twelfth year of Richard II. it was enacted that there should be but six justices in each commission, who should keep their sessions in every quarter of the year at least ; taking for their wages four shillings the day, during their sessions, and their clerk two shillings, out of the fines and amerciaments.² In the same reign we find, in a statute, that "for certain causes showed in this parliament, the justices of the peace shall be made of new, in all the counties of England, of the most sufficient knights, esquires, and gentlemen of the law of the said counties."³ In the reign of Henry V., it was enacted, that justices of the peace, named of the *quorum*, must be resident in the shire.⁴ In the same year, that they should be of the most sufficient persons dwelling in the same counties, by the advice of the chancellor, and the king's council.⁵ Notwithstanding these frequent changes, the persons appointed did not fulfil the purposes of their office, as appears by a statute of Henry VI., the preamble of which states that, "Notwithstanding the statutes, now of late, in many counties of England, the greatest number of justices have been deputed and assigned, which before this time were not wont to be,—whereof some be of small behaviour, by whom the people will not be governed nor ruled, and some for their necessity do great extortion and oppression upon the people, whereof great inconveniencies be likely to arise daily if the king thereof do not provide remedy." The king, willing to provide remedy, ordained and established that no justice of the peace shall be assigned or deputed if he have not lands

¹ 34 Edward III., cap. 1, A. D. 1360.

² 12 Richard II., cap. 10, A. D. 1388.

³ 13 Richard II., stat. 1, cap. 7, A. D. 1389.

⁴ 2 Henry V., stat. 1, cap. 4, A. D. 1414.

⁵ 2 Henry V., stat. 2, cap. 1, A. D. 1414.

or tenements to the value of £20 by year. But this ordinance not to extend to cities, towns, or boroughs which have justices of peace, of persons dwelling in the same, by commission of the king.¹

7. *The Statute concerning Treason.*

The law of treason was declared by the statute of the twenty-fifth year of Edward III., statute 5, cap. 2., entitled, "A Declaration which Offences shall be adjudged Treason."

It is a matter of great constitutional importance that the law of treason should be fixed and invariable. A despotic monarch finds his power best served by evading a legal definition of the offence; for uncertainty leaves all the acts of his subjects hostile to his power, or adverse to his inclinations, open to be construed as acts of treason. Accordingly we find, in the course of our national history, that the most powerful and despotic monarchs, on many occasions, extended the law of treason to include offences not mentioned in the statute of Edward III. It was a popular measure, in subsequent reigns, to remove the new offences from the category of treason, and to reduce the crime to the limits of the ancient statute, which remains, at the present day, the law of treason. It is, however, modified in the subjects' favour, by laws requiring stricter proof of the offence on the part of the crown, and giving the person charged more assistance and protection in his defence than are required or allowed in ordinary felonies.²

The statute, in its preamble, recites that "divers opinions have been before this time, in what case treason shall be said, and in what not; the king, at the request of the lords and commons, hath made a declaration as followeth:—

"When a man doth compass or imagine the death of the king, or of his queen, or of their eldest son and heir.

"Or if a man do violate the king's companion, or the

¹ 18 Henry VI., cap. 11, A.D. 1439.

² These will be referred to in the second part of the Treatise.

king's eldest daughter unmarried, or the wife of the king's eldest son and heir.

“Or if a man do levy war against the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be provably attainted of open deed, by the people of their condition.

“And if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into this realm, counterfeit to the money of England, as the money called Lushburgh, or other like to the said money of England, knowing the money to be false, to merchandise or make payment in deceit of the king and of his people.

“And if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices.

“For such treason the forfeiture of the escheats pertaineth to our sovereign lord, as well of the lands and tenements holden of other as of himself.

“There is another manner of treason, when a servant slayeth his master, or a wife her husband, or when a man secular or religious slayeth his prelate to whom he oweth faith and obedience; and of such treason the escheats ought to pertain to every lord of his own fee.”

The statute proceeds to declare that if any other case of supposed treason, which is not above specified, doth happen, the justices shall not go to judgment of the treason “till the cause be showed and declared before the king and his parliament, whether it ought to be judged treason or other felony.”¹

The punishment of treason was then, as it now is, *death*; but, until the law empowered the king, by warrant under his sign manual, to order otherwise,² it was accompanied by

¹ 25 Edward III., cap. 2, A.D. 1350.

² By statute 54 George III., cap. 146, A.D. 1814, which also empowers the king to order the traitor to be beheaded, instead of being hanged.

cruel torture. The criminal was drawn from the prison to the place of execution on a hurdle, he was then hanged, but, before he was dead, he was cut down and disembowelled and quartered. The punishment of women for treason was death by burning. As a consequence of treason there follows corruption of blood, which prevents the transmission of the convict's estates to his natural heirs; so that lands, as well entailed as fee-simple, and the profits of estates for life, are forfeited to the king.

The punishment of felony was in most, and still is in some cases, death by hanging, and corruption of blood follows as a consequence; but lands entailed are not forfeited; and, by the custom of gavelkind, fee-simple lands were not forfeited, which gave rise to the distich,—

“ The father to the bough,
The son to the plough.”

8. *Statute against Benevolences.*

The statute against benevolences is an important one in our constitutional history. It was passed by Richard III. immediately after his usurpation of the throne, and is an emphatic protest by the parliament against taxation by benevolences, which had been resorted to during the wars of York and Lancaster. The language of the statute is so unusually strong as a denunciation, that it seems as if the representatives of the people had taken advantage of the freedom permitted them by the usurper on his ascending the throne, to express their abhorrence of this illegal and ruinous tax.

The statute is entitled, “The subjects of this realm shall not be charged by any benevolence,” etc. The preamble describes a benevolence as a new and unlawful invention and imposition, whereby the commons and subjects of the land, against their wills and freedoms, have paid great sums of money to their almost utter destruction; for divers and many worshipful men of this realm, by occasion thereof, were compelled by necessity to break up their households,

and to live in great penury and wretchedness, their debts unpaid, their children unpreferred, and such memorials as they had ordained to be done for the wealth of their souls were anentized and annulled, to the great displeasure of God, and the destruction of the nation. Therefore the subjects and commonalty of the realm shall from henceforth be in no wise charged by none such charge, exaction, or imposition called a benevolence; but it shall be damned and annulled for ever.¹

9. *Statutes concerning the Clergy.*

No complete conception can be formed of our constitutional history unless we pay attention throughout to the position which the clergy occupied. They were in the Middle Ages divided into two great classes. The first comprised the clergy of the Church of England,—a hierarchy, composed of archbishops, bishops, and other subordinate dignitaries, based upon a very numerous body of parochial clergy, consisting of priests and deacons. The second class comprised the abbots, priors, and monks of various orders, who possessed and occupied numerous abbeys, priories, monasteries, and other religious houses, throughout the length and breadth of the land. The former of these classes was distinguished as the *secular* clergy, from their living in the world (*in sæculo*); the latter as the *regular* clergy, as living under monastic rule (*sub regulâ*): these are also called in the old statutes *religious* clergy, from their residing in religious houses. To these religious houses were attached large estates in the most beautiful and fertile parts of the kingdom; whilst the bishops had their baronies, derived from the Conqueror; and the parochial clergy had their glebes, and the tithes of the lands in their respective parishes, except in those cases where the tithes had been separated from the parochial livings, and had been appropriated to the monasteries or cathedrals. So that at the conclusion of the twelfth century nearly one-half of the land of the

¹ 1 Richard III., cap. 2, A.D. 1483.

kingdom belonged to the Church.¹ We have evidence of this wealth, in the fabrics which still testify to the devotion of our forefathers.

The institution of monasteries commenced in the Saxon times, and they were greatly augmented in the reigns of Henry I., Stephen, and Henry II. A statute of Edward I. describes the manner and purposes of their foundation. They “were founded to the honour and glory of God, and the advancement of the Holy Church, by the king (Edward I.) and his progenitors, and by his noblemen and their ancestors; and a very great portion of lands and tenements have been given by them to the monasteries, priories, and religious houses, and to the religious men serving God in them, to the intent that clerks and laymen might be admitted in such monasteries, priories, and religious houses, according to their sufficient ability;—and that sick and feeble men might be maintained, hospitality, almsgiving, and other charitable deeds might be done, and that in them prayers might be said for the souls of the founders and their heirs.”²

The influence exercised by the clergy over the laity had produced so considerable an alienation of lands to monasteries and religious houses, that it became a matter of public policy to put a stop to it; for the effect of grants to corporate bodies was to deprive the crown of the feudal services incident to the lands, and the lords of their various feudal rights. Land so appropriated was said to be in *mortuo manu*, or “dead hand;” as having lost all its transmissible and inheritable qualities. The Magna Charta of Henry III. declared that all gifts of land to any religious house should be utterly void, and the land should accrue to the lord of the fee.³ But this law being confined to religious houses, or corporations aggregate, and not extending to corporations sole, as bishops and abbots; Edward I., who opposed the pretensions of the clergy, passed a law which made the restriction general. It ordained “that no person, religious or other,

¹ Hallam's Middle Ages, vol. i. p. 506.

² 35 Edward I., stat. 1., A.D. 1307.

³ See *ante*, p. 64.

whatsoever he be that will, buy or sell any lands or tenements, or by any craft or engine, presume to appropriate to himself any lands or tenements, whereby they may anywise come into mortmain.”¹

From the Conquest to Magna Charta the actual nomination of bishops and abbots was vested in the king, who gave them investiture by delivery of the ring and pastoral staff. By the Constitutions of Clarendon, as we have seen, the chapters were compelled to elect the king's nominee, who as bishop elect did homage to him—and they also provided that the revenues of the bishops' sees should, during vacancy and until it was filled up, belong to the king. But by John's submission to the Pope, the Church recovered, what is called in Magna Charta, her liberties and freedom of elections,² which implied that the right of nominating bishops and abbots was transferred to the clergy; and they exercising it under the control of the Pope, the power was in fact transferred to him. Yet as the king still retained the temporalities during the vacancy of the see, he through them retained a check on the clergy and the Pope; for seizing the temporalities at the death of a bishop, he held them until the bishop elect,—after having been consecrated by virtue of the pope's warrant, and invested in the spiritualities of the see,—appeared before the king, and renounced every clause in the pope's bull that was or might be prejudicial to the prerogative of the crown, or contrary to the law of the land; and also swore fealty and allegiance to the king. This being done, the temporalities were delivered to the bishop.³

The great struggle of the clergy, fostered and encouraged by the pope, had been to exempt themselves from taxation, and from liability to the common law and the secular courts, and to acquire for themselves, in their spiritual courts, jurisdiction over all cases which had relation to sins against the Church, and over the wills or testaments and property of deceased persons, and in cases of matrimony

¹ 7 Edward I., stat. 2.

² See *ante* p. 51.

³ Burnet's History of the Reformation, vol. i. part 1, p. 18.

and divorce. Thus, ecclesiastical courts were established, rising in succession from the Archdeacon's court,—the lowest,—the Consistory court, or the court of the bishop,—to the court of Arches, or court of the archbishop of Canterbury, the court of Peculiars, and the Prerogative court. Over these courts, ecclesiastics presided, and administered a law different from the law of the realm, known as the Canon Law. It was the proposal of the bishops to alter the law of England by substituting the canon law, so as to render legitimate a child born before the marriage of his parents, which produced the celebrated answer of the barons, that they were unwilling to change the laws of England,—“*Nolumus leges Angliæ mutare.*”¹

The clergy obtained the first parliamentary recognition of their immunities and privileges in the reign of Edward II. They propounded certain articles, sixteen in number, as grievances committed against the Church of England, the prelates, and clergy; and required remedy to be provided. The king, by the advice of his council, made answers to the several articles; and the articles, with the answers attached, became the statute known as *Articuli Cleri*.² They were a settlement, for the time, of questions concerning which the king and his civil courts conflicted with the spiritual courts; the ground of grievance being that the king's writ of prohibition was obtained (as the articles say, purchased) by laymen, which deprived the spiritual courts of their proper jurisdiction. The statute settled in what cases those prohibitions should be issued, and when they should be withheld. Perhaps the most important distinction is, that in cases in which spiritual penance was enjoined as the punishment, the writ should not issue; but if money were demanded before a spiritual judge, the king's prohibition should lie. If a prelate enjoined a penance pecuniary, the king's prohibition should hold place; but not for a penance corporal, although it should be redeemed for money. De-

¹ 20 Henry III., cap. 9, A.D. 1235.

² 9 Edward II., stat. 1, A.D. 1315.

famations were given over to the spiritual courts, to be corrected by penance,—a power they long retained for defamatory words which were not actionable in the civil courts. Amongst the articles is a declaration that elections of vacant dignities should be made without fear of the power temporal; and that a clerk ought not to be judged before a temporal judge, nor anything be done against him that concerned life or member.

The privilege of sanctuary bestowed by the Church on criminals flying from justice, was confirmed by this statute, as well as that curious privilege which continued its course until modern times, known as ‘Benefit of Clergy.’ By this privilege, clerks who had become amenable to the civil power for any crime, when brought to trial, could be demanded from the king’s courts and officers, by the bishop or ordinary, either before trial or after conviction; and what is still more curious and anomalous is, that the privilege was not confined to actual clerks,—who might be distinguished by their clerical habit and tonsure,—but was extended to all persons who could read; probably, in those days, no very considerable extension, as few persons not educated for the Church, were instructed in reading. Sir Thomas Smith, in his ‘Commonwealth of England,’ written in 1565, describes the mode in which the test of reading was applied:—“The bishop must send one with authority under his seal to be a judge in that matter at every gaol-delivery. If the condemned man demandeth to be admitted to his book, the judge commonly giveth him a Psalter, and turneth to what place he will. The prisoner readeth so well as he can, (God knoweth, sometime very slenderly,) then he (the judge) asketh of the bishop’s commissary,—‘*Legit ut clericus?*’ The commissary must say, ‘*legit*,’ or, ‘*non legit*;’ for these be words formal, and our men of law be very precise in these words formal. If he say *legit*, the judge proceedeth no further; if he say, *non legit*, the judge proceedeth to sentence of death.¹

¹ Commonwealth of England, p. 112.

The clergy renewed their complaints at a parliament of Edward III., in 1340, and obtained a statute for regulating the king's enjoyment of the bishop's temporalities during the vacancy of the sees. It enjoined the king's escheators or keepers, in taking possession of the temporalities, not to do waste or destruction to the manors, warrens, parks, ponds, or woods,—not to sell underwood, nor hunt in the parks or warrens, nor fish in the ponds or free fisheries,—not to rack nor take fines of the tenants free or bond. This enumeration gives a high idea of the luxuries of the bishops' estates; and in order to shorten the occupation of them by the crown, the statute provided means for surrendering them to the deans and chapters, if they were willing to render the value of the voidance.¹

The clergy came forward with another complaint of grievances in the parliament of Edward III., held in 1350. The king consented not to present to a benefice in another's right by old title; and submitted to have his title examined, and to yield his claim to the patron, if he should show the king's title false. The prelates grievously complained that secular clerks, chaplains, monks, and other people of religion, had been hanged by the award of the secular justices; the king granted that such persons convicted of treasons or felonies (high treason excepted) should be delivered to the ordinaries demanding them; and the archbishop promised that he would make a convenient ordinance, whereby such offenders should be safely kept and duly punished; so that no clerk should take courage to offend for default of correction.²

Notwithstanding the archbishop's promise, the subsequent history of this curious law shows that the transfer of the clerk to the spiritual authorities was generally followed by impunity of his crime. He was submitted to a trial before the bishop or his deputy, and a jury of twelve clerks; at which the accused, backed by twelve clerical compurga-

¹ 14 Edward III., stat. 4; A Statute for the Clergy, A.D. 1340.

² 25 Edward III., stat. 3, A.D. 1350.

tors, swore to his innocence. This trial generally resulted in a verdict of acquittal; but if otherwise, in the case of an actual clerk, he was degraded from his holy office, or put to penance. "A learned judge," says Blackstone, "in the beginning of the last century, remarks with much indignation, the vast complication of perjury, and subornation of perjury, in this solemn farce of a mock trial; the witnesses, the compurgators, and the jury, being all of them partakers in the guilt; the delinquent party also, though convicted before on the clearest evidence, and conscious of his own offence, yet was permitted and almost compelled to swear himself not guilty; nor was the good bishop himself, under whose countenance this scene of wickedness was daily transacted, by any means exempt from a share of it. And yet by this purgation the party was restored to his credit, his liberty, his lands, and his capacity of purchasing afresh, and was entirely made a new and innocent man."¹

10. *Statutes of Provisors, or in restraint of the Pope of Rome.*

One of the most extraordinary of the phenomena connected with the history of the human race is the Papal power. That monarchs and nations should submit to be controlled by an individual man, dwelling far apart from them, —should invest him with attributes of divine authority, and tremble at and obey his decrees, although enforced by no material means except those they themselves furnished, through their voluntary submission to the same power, —are facts not to be accounted for by the ignorance of the

¹ 3 Peere William's Reports, 447; Blackstone's Commentaries, vol. iv. p. 368. We shall not pursue the subject, which relates rather to the criminal law than to constitutional history. Benefit of clergy was not removed from our criminal procedure until it had been reduced in vigour by numerous statutes, which, beginning with perpetrators of capital crimes, gradually descended to criminals of lesser magnitude, and deprived them of its advantage. The privilege of sanctuary was abolished by statute in the reign of James I., but "Benefit of Clergy" was not altogether abolished until 1827.

dark ages; as the power subsists and rules in this enlightened age. The censures of the Church, and excommunication from its communion, so deeply affected the consciences of men, that neither monarchs nor subjects dared to resist the Pope's decrees, without great apprehensions for their spiritual safety; whilst the privation of intercourse with their fellow-men, which was the consequence of excommunication, affected their temporal interests, and their daily social and family enjoyments. If, therefore, we give our admiration to those of our monarchs who distinguished themselves by their courage in war, and by the battles they won; we should not refuse it to those who had the moral courage, in so superstitious an age, to resist the aggressions of the Pope, and thus to enlarge the religious freedom of their people. These monarchs were Edward I., Edward III., Richard II., and Henry IV. A series of statutes was passed in their reigns, with the purpose of checking the power assumed by the Pope of nominating clerks, and especially foreign clerks, to fill the ecclesiastical dignities and benefices of England. Persons so appointed by the Pope were said to be provided, or to have provision made for them, and were called *Provisors*. From these statutes we shall learn how the Papal authority stood and was regarded by the law, prior to the period of the Reformation.

The first attack was made on the practice of levying taxes, or, as they were called, tallages, on the property and tenants of the monasteries, for the use of foreign ecclesiastics. It was not expressly against the Pope; but against foreign superiors of the monasteries, who were in many cases Cistercian and Premonstrant monks, and monks and friars of the Order of St. Augustine and St. Benedict, resident abroad; and the statute notices a variety of ways in which the money was secretly raised, and remitted out of the kingdom, for their use. "The king, considering that it would be very prejudicial to him and his people, if he should any longer suffer so great losses and injuries to be winked at, ordained that no abbot, prior, master, warden, or other

religious person, should by himself, or by merchants or others, secretly or openly, by any device or means, carry or send any tax imposed by the superiors, or assessed amongst themselves, out of his kingdom; and alien superiors were prohibited from imposing any tallages upon the monasteries in subjection to them. But the foreign superiors were not prevented from executing their office of visitation in the kingdom, according to the duty of their office.¹

Edward III. confirmed the last statute in the fourth, and again in the fifth, year of his reign.² But at a later period he made a more vigorous resistance to the pope, by a statute which, it appears, he and his parliament were roused to pass "by the grievous complaints of all the commons of his realm." These complaints may be abridged in the simple language of the statute. It begins by reciting that "the holy Church of England was founded in prelacy, by the king's ancestors and those of his barons, and that possessions, as well in fees, lands, rents, as in advowsons, of great value, were assigned to the prelates and other people of holy church to sustain the charge; and the kings, earls, barons, and other nobles, as lords and advowees, have had and ought to have the custody of such voidances, and the presentments and the collations of the benefices being of such prelacies. But the Bishop of Rome, accroaching to him the seignories of such possessions and benefices, gave the same to aliens which never did dwell in England, and to cardinals which might not dwell here, and to others, as well aliens and denizens; as if he had been the patron or owner of the advowsons of such dignities and benefices. He taketh of such benefices the first-fruits, and many other profits; and a great part of the treasure of the realm is carried away and expended out of the realm, by the purchasers of benefices and graces." The statute declared that the election of bishops and dignitaries should be made in the same manner

¹ Statutum de Asportatis Religiosorum, 35 Edw I., stat. 1, A.D. 1307
The commons are not mentioned in this statute.

² 4 Edward III., cap. 6. 5 Edward III., cap. 3.

as by the king's progenitors, and that owners of advowsons should have their collations and presentments freely to the same. And if those presented be disturbed by the Pope's provisors, the provisors and their procurators should be attached by their body and brought in to answer: and if convicted, should abide in prison without bail till they have made fine and ransom to the king, and gree to the party that should feel himself grieved.¹

The consequence of the last statute appears to have been, that the Pope's provisors took their revenge by citing the English clergy to the court of Rome; for in three years afterwards we find a statute constituting such citation an offence, and attaching heavy penalties to it. This statute was the origin of the offence afterwards so well known and dreaded as *Præmunire*; "which," says Blackstone, "took its original from the exorbitant power claimed and exercised in England by the Pope, which, even in the days of blind zeal, was too heavy for our ancestors to bear."² The nature of the offence is contempt of the king's prerogative, spiritual or secular; and its name is derived from the words in the writ, *præmunire facias*, which requires the sheriff to warn the accused to appear on a given day to answer the contempt.

The statute was founded on the grievous and clamorous complaint of the great men and commons, that "divers people had been drawn out of the realm to answer of things whereof the cognizance belonged to the king's court; and that the judgments given in that court had been impeached in another court;" and it enacted, that all the people of the king's ligeance who should draw any out of the realm in plea, whereof the cognizance pertained to the king's court, should have a day, containing the space of two months, by warning by the sheriffs, to appear before the king and his council, or in his chancery, or before the king's justices, to answer of the contempt. The punishment for default of appearance

¹ 25 Edward III., stat. 6, A.D. 1350.

² Commentaries, book iv. cap. 8.

on the day was, that they should be put out of the king's protection, their lands, goods, and chattels be forfeit to the king, and their bodies be taken and imprisoned, and ransomed at the king's will. Moreover, if upon the writ issued to seize them and their property, it be returned that they be not found, they should be outlawed.¹

These severe penalties of *præmunire* were by a later statute confirmed, except that as to the spiritual and temporal lords of the realm, their bodies were not to be taken. But the penalties were extended to all those who should obtain, purchase, or pursue against the king or his subjects personal citations from Rome,—and against those who should obtain dignities, offices, or benefices of churches, to the prejudice or damage of him or his subjects.²

Richard II. assembled a parliament in the first year of his reign, and the first statute was one confirming the rights, liberties, and franchises of the Church.³ The same was repeated in the parliaments of the second and the third years of his reign; but in the latter year is a statute which shows that the pope's appointments to English benefices had not been stopped by the previous laws, and the mischiefs resulting from them are described in simple but fervid language. "Now of late, by the informations, instigations, and procurements of some of the king's liege people, benefices have been given, against the will of the founders, to people of another language, and of strange lands and nations; and sometimes to the utter enemies of the king and of his realm, which never made residence in the same, nor cannot, may not, nor will not bear and perform the charges of such benefices, in hearing confessions, preaching, nor teaching the people, keeping hospitality, nor accomplishing the other things necessary to the governance of the same benefices; but only thereof have and take the emoluments and temporal profits, not having regard to the spiritual cure, nor to

¹ 27 Edward III., stat. 1. A Statute of Provisors, A.D. 1353.

² 38 Edward III., stat. 2, A.D. 1363.

³ 1 Richard II., cap. 1, A.D. 1377.

other charges to the same benefices pertaining or belonging ; but manifestly suffer the noble buildings in old times there made, when the same benefices were occupied by Englishmen, wholly to fall to decay, whereby the divine service is greatly minished, the cure of souls neglected and left, the clergy enfeebled, the treasure of the realm carried to the hands of aliens, and all the estate of Holy Church brought to less reverence than before it was wont to be." The remedy provided by the statute for these grievances was to prevent the alien incumbents deriving any advantage from their benefices through the agency of others ; and the statute ordained that none of the king's liege people, nor other person, should take or receive procuracy, letters of attorney, nor ferm of any benefice, "of any person of the world," but only the king's liege people, without the king's license—nor convey gold, silver, nor other treasure or commodity out of the realm by letter of exchange, by merchandise, nor in any other manner to the profit of the aliens. The penalties for disobedience were those of *præmunire*.¹

It is said that the lords spiritual did not assent to this statute, and it contains a clause that no bishop should meddle by way of sequestration, nor in any other manner, with the fruits of such benefices to the profit of the aliens.

Richard confirmed the statute by another in the seventh year of his reign, and put down applications to him for his license to remit money's to the aliens. "The king willeth and commandeth to all his subjects and others, that they shall abstain from henceforth to pray him for any such license to be given."²

The determination with which the king and parliament opposed the aggressions of the Pope and the foreign ecclesiastics, and the perseverance of the latter in their aggressions, are shown by the frequent statutes, and the different remedies and punishments ordained. A few years only after the last statute there is another, that if any accepted of a

¹ 3 Richard II., cap. 3, A.D. 1379.

² 7 Richard II., cap. 12, A.D. 1383.

benefice of Holy Church contrary to the statute of 25 Edward III., cap. 6, and be beyond the sea, he should abide exiled and banished out of the realm for ever; his lands and tenements, goods and chattels should be forfeited to the king; and if he were within the realm, he should be also exiled and banished, and should incur the same forfeiture, and take his way; so that he be out of the realm within six weeks next after such acceptance. Any person who should receive such banished person from beyond the sea, or remaining within the realm after the six weeks, knowing thereof, should also be exiled and banished.

It was provided, however, that the Pope's presentees to any voidance prior to the 29th of January in that year (1389), should enjoy their archbishoprics, bishoprics, dignities, and benefices peaceably for their lives; but severe penalties were imposed on the lords spiritual and temporal, and persons of a more mean estate, who should induce the king to send a letter to Rome, or who should themselves send or sue to Rome, whereby anything should be done contrary to the statute.

The following chapter¹ of the same statute provides punishment for what might be expected to follow its stringent enactments—excommunications from Rome. Any one who should bring or send into the realm any summons, sentences, or excommunications against any person, because of his assent to or execution of the Statute of Provisors, should be put in prison, and forfeit all his lands and tenements, goods and chattels, for ever, and incur the pain of life and member. If any prelate executed the sentences or excommunications, his temporalities should be taken and abide in the king's hands till redress and correction made; if any inferior person did so, he should be imprisoned, and make fine and ransom by the discretion of the king's council.²

These enactments, in their various forms, did not suffice; and the commons appear to have been roused to the highest pitch of indignation and resentment. They thought it ne-

¹ 13 Richard II., stat. 2., cap. 3, A.D. 1389.

² Cap. 2.

cessary to require each of the three estates of parliament to make a separate declaration of their sentiments respecting the aggressive conduct of the Pope; and these declarations are incorporated in a statute. The commons refer to the ancient jurisdiction of the king's court, over cases relating to the right of presentments to benefices, and to the duty of the archbishops and bishops to execute the judgments of the king's court, by the king's commandments (for a lay person cannot make such execution); but that of late the Bishop of Rome had made censures of excommunication upon certain bishops because they had made execution of such commandments. They also say that a common clamour is made that the Bishop of Rome purposed to translate bishops without the king's knowledge or assent, and to translate some out of the realm, so that the liege sages of his council would be taken away. They specify various injurious consequences to be apprehended from the Pope's proceedings,—terminating in an indignant remonstrance against their effects on the freedom of the crown of England. “So the crown of England, which hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality of the same crown, and to none other, shall be submitted to the Pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the king our lord, his crown, his regalty, and of all his realm, which God defend.”

The commons declared that they would all stand with the king, to live and to die. They prayed the king, and required him by way of justice, that he would examine all the lords spiritual and temporal, and all the states of parliament, how they thought of the cases aforesaid; and how they would stand with the king, in upholding the rights of the crown and regalty.

The lords temporal answered every one by himself, that the cases were clearly in derogation of the king's crown, and of his regalty, as was well known, and had been of a long

time known ; and that they would be with the crown in those cases specially ; and in all other cases which should be attempted against the crown, with all their power.

The archbishops, bishops, and prelates present in parliament,—making protestations that it was not in their mind to say, nor affirm, that the bishop of Rome might not excommunicate bishops, nor that he might make translation of prelates after the law of Holy Church,—severally answered, that if any executions of processes of the king's court be made by any, and censures of excommunication be made against bishops or others, for that they had made execution of such commandments ; and that if any execution of translations be made of prelates who were profitable and necessary to the king ; or that the sage people of his council, without his assent and against his will, be removed and carried out of the realm, so that the substance and treasure of the realm be consumed,—that the same is against the king and his crown.

The procurators, or proxies of the absent prelates, answered “that the lords spiritual would, and ought to be, with the king in these cases, in lawfully maintaining of his crown, and in all other cases touching his crown and regalty, as they be bound by their ligeance.”

The statute concludes with an enactment imposing the penalties of *præmunire* on all who should purchase or pursue, in the court of Rome,—by any such translations, processes, and sentences of excommunication,—bulls, or other things whatever which touch the king, his crown, his regalty, or his realm, and upon all those who should bring them into the realm, receive them and execute them there.¹

Few who read these almost dramatic proceedings will fail to admire the bold and patriotic conduct of the commons, the loyal answer of the peers, and to remark the cautious and conditional answer of the prelates, whose interests and whose prejudices, it is too apparent, inclined them to Rome in preference to their king and country.

¹ 16 Richard II., cap. 5, A.D. 1392.

Henry IV. was not behind his predecessors in resistance to the aggressions of the Pope. In his reign were passed several statutes of more brevity, but with equal point and spirit.

The first statute is directed against a new mode of annoyance proceeding from the Pope, that of exempting clerical persons from their obedience. It imposes the penalties of *præmunire* on such provisors as should accept the Pope's provision to exempt them from obedience regular, or obedience ordinary; or to have any office perpetual within houses of religion.¹ In the next chapter of the same statute it combats a new grievance complained of by the commons—that the religious men of the Cistercian order, in England, had purchased bulls to be discharged from the payment of tithes of their lands, to the prejudice of the church to which the tithes belonged. It declared that the Cistercians should stand in the state they were before the bulls were purchased; and that they and all other persons who should put such bulls in execution, or purchase new bulls, should be liable to the penalties of *præmunire*.² A few years later a statute was passed, that the farmers and occupiers of the lands of aliens should pay their tithes to the parsons and vicars of holy Church, notwithstanding that the lands were seized by the king, or prohibition made to the contrary.³

These statutes conclude with one in the ninth year of Henry IV., which declared that the elections of all archbishoprics, bishoprics, abbeys, priories, deaneries, and other dignities elective, be free, without being in anywise interrupted by the Pope, or by the commandment of the king. The king's prerogatives were, however, preserved.⁴ Between this time and the reign of Henry VII. there are several statutes to confirm the rights and privileges of the Church, but none which made any material alteration of the law.

From these statutes it is apparent that our ancestors, although Roman Catholics, were not Papists; that although

¹ 2 Hen. IV., c. 3, A.D. 1400.

³ 5 Hen. IV., c. 11, A.D. 1403.

² *Idem*, cap. 4.

⁴ 9 Hen. IV., c. 9, A.D. 1407.

they held the same religious faith with the Pope, they did not allow his spiritual authority to interfere with their loyalty to the king, or with their love of civil liberty.

11. *Statutes against Heretics.*

The contest between the Pope, and the king and parliament of England, related chiefly to the temporalities of the Church, without reference to its doctrines; nor was the supremacy of the Pope disputed, except so far as he used his power to secure a share of the temporalities, for himself and his nominees. But in the latter part of the fourteenth century, John Wycliffe arose out of the University of Oxford, of which he was a Doctor, as a great religious reformer, foreshadowing the principles of the Reformation. He translated the Bible out of the Vulgate, or Latin, into English; and in his teachings and writings he reflected severely on the corruption of the clergy, condemned the worshiping of saints and images, denied the real presence, and exhorted all people to the study of the Scriptures. The favour of some great men prevented or frustrated attempts to punish Wycliffe, or to suppress his preaching; but after his death, he was condemned of heresy, and his body was exhumed and burned. When considering the rise and growth of a constitution in which civil and religious freedom are considered of at least equal importance, it will be necessary to trace the progress of the laws which were enacted to support the Church of England, and to suppress opposition to it, prior to the Reformation.

The first statute is in the reign of Richard II. Its preamble states that, "forasmuch as it is openly known that there be divers evil persons, going from county to county, and from town to town, in certain habits, under dissimulation of great holiness, and without the license of the ordinaries or other sufficient authority,—preaching daily, not only in churches and churchyards, but also in markets, fairs, and other open places where a great congregation of people is, divers sermons containing heresies and notorious errors,

. . . which preachers, cited or summoned before the ordinaries, will not obey their summons, nor care for their monitions nor censures of the Holy Church, but expressly despise them; and moreover, by their subtile and injurious words, do draw the people to hear their sermons, and do maintain them in their errors, by strong hand and by great routs,—it was ordained that the king's commissions be made to the sheriffs to arrest all such preachers, their fautors (favourers), maintainers, and abettors, and to hold them in arrest and strong prison till they will justify them according to the law and reason of Holy Church.”¹

The followers of Wycliffe, increasing in numbers, received the name of Lollards, as a term of reproach; a German name, but of disputed origin. The next statute refers to the Lollards as a sect; and from its strong language and severe penalties, it may be inferred that they caused great alarm to the orthodox clergy. The statute is of the second year of Henry IV. Referring to the Catholic faith and the Church of England established in the realm; “yet nevertheless divers false and perverse people,—of a certain new sect,—of the faith of the sacraments of the Church and the authority of the same damnably thinking, . . . and usurping the office of preaching,—do preach and teach, openly and privily, divers new doctrines, and wicked, heretical, and erroneous opinions, contrary to the faith and determinations of holy Church. And of such sect and wicked doctrine and opinions, they make unlawful conventicles and confederacies; they hold and exercise schools; they make and write books; they do wilfully instruct and inform people; and, as much as they may, excite and stir them to sedition and insurrection; the diocesans and their jurisdiction spiritual, and the keys of the Church with the censures of the same, they do utterly contemn and despise; and so their wicked proceedings continue from day to day,

¹ 5 Richard II., stat. 2, cap. 5. But there is a note in the statute-book, that it is “not a statute, the commons never assenting thereto.” (Pickering's Statutes.)

to the hatred of right and reason, and utter destruction of order and good rule. For the conservation of the Catholic faith and sustentation of God's honour, and the safeguard of the estate, rights, and liberties of the Church of England; and that this wicked sect should cease and be utterly destroyed,—it was ordained that none should preach without the license of the diocesan; that none should preach, teach, or write any book contrary to the Catholic faith; nor of such sect and wicked doctrines make conventicles, or hold or exercise schools. Persons acting contrary to the statute, were made subject to fine and imprisonment by the diocesan and his commissaries; and if after such conviction they refused to abjure the same wicked sect, preachings, doctrines, and opinions, or should fall into relapse, they should be handed over to the sheriff, or other secular power, who should receive the convicts, “and them before the people, in a high place, do to be burnt, that such punishment may strike in fear to the minds of others.”¹ The statute of Richard II. imposed no higher penalty than imprisonment. But Henry IV., although strongly believed to have imbibed the principles of the Lollards, engaged parliament to invest the Church with the power of punishing its opponents by burning; hoping by that step to acquire its support to his precarious occupation of the throne.

Before this statute the writ “*De Heretico Comburendo*” could only be issued by the special direction of the king, who by that means reserved his power of pardoning the heretic. By this statute the diocesan, without the consent of the crown, or the intervention of a synod, could hand over the unhappy victim to the sheriff, who was bound, *ex officio*, to commit him to the flames.² “This weapon,” says Hume, “did not long remain unemployed in the hands of the clergy. William Sautré, rector of St. Osithes, in London, had been condemned by the convocation of Canterbury; his sentence was ratified by the house of peers; the king

¹ 2 Henry IV., cap. 15, A.D. 1401.

² Blackstone's Commentaries, book iv. ch. 4.

issued his writ for his execution;¹ and the unhappy man atoned for his opinions by the penalty of fire." This is the first instance of that kind in England.²

The next and last statute is directed against the Lollards by name. It states that "great rumours, congregations, and insurrections of people of the sect of heresy commonly called Lollardry, were of late made to subvert the Christian faith, and the law of God, and holy Church, to destroy the king and all the estates of the realm, and also all manner of policy, and finally the laws of the realm;" and it required the chancellor, judges, sheriffs, and all officers having governance of people, to take an oath to use all their power and diligence to destroy the heresies called Lollardries. It directed that persons convicted should forfeit their lands and goods; that the judges and justices of the peace should have power to inquire of heretics, and to order the sheriffs to arrest them; and as the cognizance of heresy belonged to the judges of holy Church and not to the secular judges, to send them in safeguard to the ordinaries, or to their commissaries, to be acquit or convict, after the laws of holy Church.³

¹ Rymer, vol. viii. p. 178.

² Hume's History, cap. 18.

³ 2 Henry V., cap. 7. The intent of the heretics called Lollards, etc., A.D. 1415.

CHAPTER IX.

HENRY VII., FIRST OF THE TUDOR MONARCHS.

A.D. 1485–1509. Reigned 24 years.

The Sixteenth Century.—Union of York and Lancaster.—Henry, Duke of Richmond, crowned King.—Temporal Peers in a Minority.—First Parliament.—The Crown entailed on his Heirs.—His Marriage.—Supplies granted for War.—Benevolence.—Morton's Fork.—Statutes.—Allegiance to a King *de facto*, settled as a Constitutional Principle.—Court of Star-chamber.—Its Constitution and Power.—Prince Arthur.—His Marriage with Katherine of Arragon.—His Death.—Prince Henry.—His Contract of Marriage with Katherine.—Marriage of Lady Margaret with the King of Scots.—General Laws.

WE now approach the sixteenth century, the commencement of which may be marked as the epoch of modern history. We behold a flood of light shed upon the nation, more remarkable even than that which illuminates the nineteenth century, because more contrasted with antecedent darkness. Printing, the art most productive of knowledge and freedom, had been invented in Germany, and introduced into England by Caxton. It was soon employed to dispel the ignorance that prevailed, and produced what is termed 'the revival of letters;' and in defiance of the opposition of priests and monks, it gave to the people of England a possession next in importance to revelation itself,—the Bible translated by Tyndal into the English tongue. The application of the magnet to the purposes of navigation, in the same century, coincided nearly with the discovery of America, and of the passage to the East Indies by the Cape of Good Hope; and by the certainty which that invention contributed to

the science of navigation, those distant countries opened new sources of commerce, and became places of colonization for our adventurous countrymen. Gunpowder also superseded the ancient weapons, and caused a great revolution in the art of war. The union of the Roses had terminated the bloody strife of the houses of York and Lancaster. The Reformation began to dawn; and we shall, hereafter, have to notice the effect of its full lustre on the civil and religious freedom of the English people.

The defeat and death of Richard III., in the battle of Bosworth-field, on the 22nd of August, 1485, afforded an opportunity of uniting the two factions of York and Lancaster, by the marriage of a king of the house of Lancaster with a queen of the house of York. The nation, worn out by civil war, gladly accepted that arrangement; and Henry Tudor, Duke of Richmond, with a defective hereditary title, and chiefly as the leader of a victorious army, who proclaimed him king on the field of battle, was advanced to the throne as Henry VII., on a preceding agreement, that he should marry the Princess Elizabeth of York, daughter of King Edward IV.¹ He himself would have desired to rest his right to the crown on hereditary right, or conquest, in preference either to a matrimonial or a parliamentary title; and he took care that his coronation, which took place on the 13th of October, 1485, should precede both his marriage, and the assembling of parliament. The revulsion from civil war and anarchy to tyranny, is so frequent a lesson of history, that we are not surprised at the absolute authority he obtained; an authority which continued unabated during the reigns of his son, and grandchildren. But there is one redeeming circumstance, that the Tudor monarchs never employed their power to put aside the representative element of the government; and if parliament was often cowed and overawed, there was no systematic attempt to supersede it.

The destruction of the nobility in the civil wars, by lower-

¹ Lord Bacon's *Life of Henry VII.*, Spedding's ed. p. 29.

ing the power of the aristocracy, placed Henry VII. in a condition to acquire and exercise absolute power. The number of the temporal peers was reduced by the wars to about forty. The spiritual peers were, therefore, during his reign, the majority of the Upper House; and, by their means, he maintained a predominant influence there. "He kept," says Lord Bacon, "a strait hand on his nobility; and chose rather to advance clergymen and lawyers, which were more obsequious to him, but had less interest in the people; which made for his absoluteness, but not for his safety. For his nobles, though they were loyal and obedient, did not co-operate with him, but let every man go his own way."¹

His first parliament met on the 7th of November, 1485. The king addressed them in a short speech, and told them that he was come to take possession of the crown of England, as well by his just title of inheritance, as by God's true judgment in giving him the victory over his enemy in the open field.² The crown was settled on him and the heirs of his body, without reference to his promised marriage; and thus he succeeded in the chief end of his calling the parliament, to have the crown entailed on himself.³ The statute was confirmed by the Pope's bull in the following year, "so that," observes Lord Bacon, "to his three titles of the two houses and conquest, were added two, the authorities parliamentary and papal, which made it a wreath of five."⁴ The speaker, afterwards, in the most humble and respectful manner, besought him to espouse and take to his bed the Princess Elizabeth. The speaker having ended, the lords spiritual and temporal, rising from their seats, made the same request; and the king, with his own mouth, answered, that he was willing to do as they desired him.⁵

In the beginning of the year 1486, the king solemnized

¹ Lord Bacon's Life of Henry VII., p. 242.

² Rot. Parl., 1 Henry VII., p. 268.

³ Bacon's Henry VII., p. 37.

⁴ *Idem.*

⁵ Rot. Parl., 1 Henry VII. Parl. Hist. vol. ii. p. 418.

his marriage with the Princess Elizabeth, which, although designed to exclude all other titles, did not prevent this reign from being much disturbed by claimants or pretenders to the throne, and insurrections to support them. These, however, do not fall within the limits of our design.

Henry held seven parliaments in the course of his reign of twenty-four years. Every parliament granted him supplies or subsidies. His first parliament granted him tonnage and poundage for his life.¹ He made his wars the ground of the subsidies he required; and did not disdain to submit to parliament, the expediency of the wars. In the second parliament, that met on the 9th of November, 1488, Thomas Morton, Archbishop of Canterbury and Lord Chancellor, declared the cause of its being summoned. The French king had 'made hot war' on the Duke of Brittany. "The king prayeth your advice, which is no other but whether he shall enter into an auxiliary and defensive war for the Bretons against France—making, however, no conclusion or judgment of any point until his grace hath received your faithful and politic advices." This parliament not only advised the king to espouse the cause of the Duke of Brittany (to prevent the increase of the power of France), and to send him some speedy aid, but they unanimously voted a large supply for that purpose.²

Another parliament met on the 17th of October, 1491, in which the king in person again laid the question of war with France before the parliament. He recommended the war, not for a few crowns of tribute or acknowledgment, but to try our right to the crown of France itself. He asked supply. "But for the matter of treasure, let it not be taken from the poorer sort, but from those to whom the benefit of the war may redound. France is no wilderness; and I that profess good husbandry, hope to make the war (after the beginnings) to pay itself. Go, therefore, in God's

¹ This was not effected by a statute, but by an indenture presented to him by the commons in parliament. (Rot. Parl., 1 Henry VII.)

² Bacon's Henry VII., p. 77.

name, and lose no time, for I have called this parliament wholly for this cause." The parliament advised the king, with great alacrity, to undertake the war with France, and consented that commissions should go forth for the gathering and levying a benevolence from the more able sort.¹

The supplies which Henry obtained on the ground of his wars, were a source of wealth to him, and his submission to parliament of the expediency of his wars, was the result of his avarice, rather than of his patriotism. "The truth is (says Lord Bacon) he did but traffic with that war, to make his return in money."² The benevolence assented to by parliament was contrary to the statute of Richard III., which so vehemently denounced that mode of raising supplies; and how much its enforcement depended on the commissioners employed to raise it, and how arbitrary and undefined was their power, we learn from Lord Bacon, who informs us that "there was a tradition of a *dilemma* that Bishop Morton, the chancellor, used, to raise up the benevolence to higher rates; and some called it his fork, and some his crotch. For he had couched an article in the instructions to the commissioners who were to levy the benevolence, that if they met with any that were sparing, they should tell them that they must needs have, because they laid up; and if they were spenders, they must needs have, because it was seen in their port and manner of living; so neither kind came amiss."³ The benevolence, although originally illegal, was countenanced by 'a shoring or underpropping act,' which made the sums agreed to be paid, but not brought in, leviable by course of law.⁴

¹ Bacon's Henry VII., p. 119. The speeches of Morton and Henry to the second and third parliaments are not found in the Rolls of Parliament. "They are to be taken," observes Mr. Spedding, the learned editor of Bacon's works, "as a representation of what Bacon imagined, in such circumstances, with such ends in view, would or should have been said," (vol. v. p. 75.) Mr. Spedding has also expressed an opinion that the assemblies addressed on these occasions, were *great councils*, and not *parliaments*. (*Idem*, App., p. 247.)

² *Idem*, p. 120.

³ *Idem*, p. 121.

⁴ 11 Hen. VII., c. 10. Bacon's Hen. VII., p. 160.

Henry, for the gratification of his insatiable avarice, employed two celebrated instruments of extortion, Empson and Dudley,—“lawyers in science and privy counsellors in authority,—who turned law and justice into wormwood and rapine.”¹ Dudley was made Speaker of the House of Commons in the parliament of 1503; on which Lord Bacon remarks, that “a man may easily guess how absolute the king took himself to be with his parliament, when Dudley, that was so hateful, was made Speaker of the House of Commons.”²

Throughout the acts of Henry’s seven parliaments there is only one that can be considered as relating to public government. Its object was to smooth the course of allegiance to Henry as king *de facto*. “It ordained that no persons that attend upon the king, for the time being, in his person, and do him true and faithful service of allegiance in the same, or be in other places by his commandment in his wars, within this land or without, shall for so doing be convict or attaind of high treason, nor lose nor forfeit life nor lands.”³ It was tried to make the act irrevocable by providing that any act made contrary to it should be void;—a provision (observes Lord Bacon) which was illusory; “for a supreme and absolute power cannot exclude itself; neither can that which is in its nature revocable, be made fixed.”⁴ This act settled an important question as to the effect of acts of attainder passed during the Civil War, as each faction prevailed, and got possession of parliamentary power. The question was referred to the judges in the first parliament of Henry, who resolved “that the descent of the crown of itself takes away all defects and stops in blood, by reason of attainder.”⁵ This act confirmed that decision, and in effect declared the constitutional principle to be,—that allegiance to a king *de facto* protects the subject from future question: it was brought into operation at the critical period of the Revolution, when it was made the justification of the acceptance of William III.

¹ Bacon’s Henry VII., p. 217.

² Bacon’s Henry VII., p. 222.

⁴ 2 Bacon’s Henry VII., p. 160.

³ 11 Henry VII., cap. 1.

⁵ Rot. Par., 1 Henry VII.

as king, by many who found difficulty in getting over the divine right of James II.¹

Another statute reconstituted the Court of Star-Chamber, which long afterwards exercised tyrannical authority over the community. It had existed many years before, as an appendage to the power of the king's council.² It is described by Lord Bacon as "one of the sagest and noblest institutions of the kingdom. For in the distribution of courts of ordinary justice (besides the high court of parliament) in which distribution the king's bench holdeth the pleas of the crown; the common-place, pleas civil; the exchequer, pleas concerning the king's revenue; and the chancery, the pretorian power for mitigating the rigour of the law, in case of extremity, by the conscience of a good man; there was, nevertheless, always reserved a high and pre-eminent power to the king's council in causes that might, in example or consequence, concern the state of the commonwealth; which, if they were criminal, the council used to sit in the chamber called the Star-chamber; if civil, in the white chamber, or Whitehall. And as the chancery had the pretorian power for equity, so the star-chamber had the censorian power for offences under the degree of capital."³

The act of Henry gave the judicial power to the chancellor and treasurer of England, for the time being, and keeper of the king's privy seal, or two of them, calling to them a bishop, and a temporal lord of the king's most honourable council, and the two chief-justices of the king's bench and common-place, for the time being, or other two justices in their absence.⁴ It declared the jurisdiction of the court to

¹ Lord Macaulay's History, vol. ii. p. 18.

² The judges declared in Chambers's case that the court of Star-chamber was not created by the statute 3 Henry VII., but was a court many years before, and one of the most high and honourable courts of justice. —Croke's Reports, vol. v. ch. i. p. 168.

³ Bacon's Henry VII., p. 85.

⁴ We may anticipate here so far as to state that, by the statute 21 Henry VIII., cap. 20, the president of the king's council was added to the court of Star-chamber. It was also declared that the President of

be over "unlawful maintenances, giving of liveries, signs and tokens, and retainders by indentures, promises, oaths, writings, or otherwise other embraceries of his subjects; untrue demeanings of sheriffs in making of panels, and other untrue returns, by taking of money, by juries, by great riots, and unlawful assemblies; whereby the policy and good rule of the realm was almost subdued." It declared the mode of proceeding to be, "by bill or information put to the chancellor for the king, or any other (a subject); whereupon the court had authority to call the misdoers before them by writ, or privy seal, and to examine them and others, by their discretion, by whom the truth might be known; and such as they found therein defective, to punish them after their demerits, after the form and effect of statutes thereof made, in like manner and form, as they should and ought to be punished, as if they were thereof convict after the due order of law."¹

The constitution of this famous court made it easy for it to acquire the tyrannical power it afterwards exercised, and to overstep the "due order of law," to which the act restricted it. Its jurisdiction, as expressed in the act, too, seems very undefined. Lord Bacon's explanation shows that it was applicable to inchoate and incomplete crimes: "This court of star-chamber is compounded of good elements; for it consisteth of four kinds of persons,—counsellors, peers, prelates, and chief judges: it discerneth also principally of four kinds of causes; forces, frauds, crimes various of stellionate, and the inchoations or middle acts towards crimes capital or heinous, not actually committed or perpetrated. But that which was principally aimed at by this act was force, and the two chief supports of force, combination of multitudes, and maintenance or headship of great persons."²

the council should be associated in the naming of sheriffs, and settlings of prices of wines, and all acts appointed to be done by the chancellor, treasurer, and keeper of the king's privy seal, for the time being.

3 Henry VII., cap. 1.

² Bacon's Henry VII., p. 85.

Henry had two sons, Arthur, and Henry, Duke of York. On the 14th of November, 1501, Arthur was married to the lady Katherine, fourth daughter of Ferdinand and Isabella, king and queen of Spain; Arthur being about fifteen years of age, and Katherine rather older.¹ Arthur died on the 2nd of April, 1502. On the 18th of February following, Henry was created Prince of Wales, and Earl of Chester and Flint: the dukedom of Cornwall devolved to him by statute. At twelve years of age he was contracted with the Princess Katherine; "the secret providence of God ordaining that marriage to be the occasion of great events and changes."²

In the same year the lady Margaret, the king's eldest daughter, was espoused to James, King of Scotland, through which marriage the crown, in the course of time, devolved upon the Stuart kings. The Parliament gave him an aid of £36,000 for her marriage-portion.³

Lord Bacon eulogizes Henry for his good laws. He describes him "as the best lawgiver to this nation since King Edward I." Of these laws none besides those that have been mentioned relate to public government; and few, if any of the others, remain at the present day, except the statute which conferred a sort of constitutional right, on "such persons as are poor, to sue *in formâ pauperis*," in the courts of law and equity, without payment of fees, and to have counsel and attorneys assigned to them by the courts, "without any reward for their counsel, help, and business in the same."⁴

¹ Lord Bacon says 'eighteen,' but Miss Strickland, on the authority of a Spanish MS., states that Katherine was born on the 15th of December, 1485, therefore not quite sixteen at her marriage. See note to Bacon's Henry VII., p. 212.

² Bacon's Henry VII., *passim*.

⁴ Bacon's Henry VII., p. 92.

³ Parl. Hist., vol. ii. p. 458.

⁵ 11 Henry VII., cap. 12.

CHAPTER X.

HENRY VIII.

A.D. 1509-1547. Reigned 38 years.

Henry's Power and Popularity.—His first Five Parliaments.—Tonnage and Poundage.—He disregarded Laws of Taxation.—Wolsey's Demand on the House of Commons.—Forced Loans.—Henry's policy sprang from the Reformation.—Defender of the Faith.—His Decision between Clergy and Laity.—His Contest with the Pope.—His Application for a Bull to dissolve his Marriage.—The Pope appointed a Trial before his Legate.—The Trial.—Its Abandonment.—Cranmer.—His Sentence of Divorce.—Its Effect at Rome.—Parliament of 1529.—Statutes passed in Diminution of Clerical Privileges.—In Reduction of Fees on Probates of Wills.—On Mortuaries.—Against Pluralities.—Parliament of 1531.—Statute to restrain Citation to Ecclesiastical Courts.—First Statute against the Pope.—Against Payment of First-fruits to Rome.—Session of 1523.—Statute on Appeals to Rome.—Session of 1533-4.—Statute of Submission of the Clergy.—Parliament of 1533.—Statute repudiating the Pope, and giving Appointment of Bishops to the King.—All Payments to Rome abolished.—Act concerning the Succession.—Adjustment of the Quarrel between the King and the Pope frustrated by Accident.—The Pope's Sentence declaring the Marriage with Katherine valid.—Parliament of 1534.—Statute declaring the King Head of the Church.—Oath of Obedience.—First-fruits and Tenths granted to Henry.—Parliament of 1535.—Dissolution of the smaller Monasteries.—Of the large Monasteries.—Constitutional effect thereof.—Act for Abolishing Diversity of Opinions.—Henry excommunicated, but refuses to return to Rome.—Civil Constitution.—Court of Wards.—House of Lords.—New Bishops.—Chester made a Parliamentary County.—Wales Incorporated with England.—Royal Prerogatives declared.—Unconstitutional Laws.—General Statutes.

HENRY VIII. succeeded his father, on the 22nd of April,

1509, at about the age of eighteen, and his marriage with Katherine was solemnized in the following June. He was the heir of the union of the White and Red Roses, so that there was no discontented party left in the kingdom. He inherited also from his father a vast sum of money, accumulated through the instrumentality of Empson and Dudley; and Henry requited their services, yielded for the personal gains and supported by the personal acquiescence of his father, by arraiging and executing them for high treason. He thus acquired popularity with his people, who had suffered through their extortions; and some redress was offered by acts in Henry's first parliament, by which Empson and Dudley were attainted, their property confiscated, and parties injured by untrue inquisitions through their procurement were allowed to traverse or contest them.¹

The first five parliaments of Henry, covering the first twenty years of his reign, were perfectly barren of constitutional laws, unless we admit as one, an act for enforcing better attendance in the commons house of parliament. It appears that "the knights, citizens, and burgesses, long time before the end of the parliament, of their own authority, departed and went home, whereby great and weighty matters were many times delayed." It was provided that no member should depart, or absent himself, until the parliament was fully ended or prorogued, except with the license of the speaker and the house, upon pain of losing his wages.²

Henry carried on his government throughout the whole period of his reign with little regard to the law that the people should not be taxed without consent of parliament, whenever it interfered with his will. His first parliament granted him tonnage and poundage for his life; but with a proviso "that these grants be not taken in example to the

¹ The Journals of the House of Lords commence in this reign, superseding the Rolls of Parliament. The Journals of the Commons commence in the first year of Edward IV.

² 6 Henry VIII., cap. 16.

kings of England in time to come.”¹ His four following parliaments granted him subsidies;² and being required for his wars with France, they were readily and cheerfully given. But in his parliament of 1523 coercion was employed. Cardinal Wolsey, then the king’s minister and favourite, went personally to the house of commons and astounded the house by demanding £800,000; and the House of Commons resisting, he made it another visit, in great state and pomp, and desired to hear the reasons of those who were against the supply. They received him in silence, by the advice of Sir Thomas More, their speaker, who told him that it was a rule of their house never to debate before any but themselves; and his desire was frustrated.² But they made no spirited resistance to the unconstitutional interference of Wolsey, and entered into a debate, which continued for fifteen days, making their poverty their chief argument; “the highest necessity alleged on the part of the king, the highest poverty confessed on the part of the members.”³ The presence of many of the king’s servants gave a majority which carried a subsidy, much inferior in amount to that demanded by Wolsey, but one which, it was intimated, “it would be very difficult to levy from the people, and would be likely to endanger the loss by the king, of the goodwill and true hearts of his subjects.”⁴

The parliaments of the last sixteen years of Henry’s reign granted to him supplies three times only, with long intervals between them, one of which extends to eleven years. In the absence of parliamentary grants, Henry supplied his necessities by forced loans secured by privy seals, and by benevolences. The latter being objected to as illegal by the statute of Richard III., the judges were consulted, and they affirmed the statute as the work of a usurper, not to be binding on a legal king. An instance of the danger of re-

¹ 1 Henry VIII., cap. 20.

² Burnet’s Reformation, book i.

³ See Letter of an M.P., in Ellis’s Letters Illustrative of English History, vol. i. p. 220. Parliamentary History, vol. iii. p. 29.

⁴ See *ante*, p. 136.

fusing compliance with these demands is found in the case of Richard Reed, an alderman of London, who set an example of resistance to a benevolence, by refusing to contribute. He was sent down to serve as a common soldier on the Scottish border; and the general in command was directed to employ him in the hardest and most perilous duty.¹ But whether Henry's recourse to illegal taxation is to be attributed to his love of arbitrary power, or was forced upon him by the omissions of Parliament to grant him reasonable supplies, may well be doubted,—for when an opportunity occurred for remonstrating against benevolences as illegal and unconstitutional, the parliament took no such course, but passed an act remitting to the king the money he had borrowed of his subjects by way of prest or loan, by his privy seal, and requiring all those who had been repaid, to return the money to the king.²

But the arbitrary and illegal proceedings of Henry have passed away, and are now only matters of history. Neither does it belong to our subject to dilate on his conduct towards his successive queens, nor to attempt to estimate the various and inconsistent qualities of his character. We have only to consider those transactions of his reign which have had a permanent effect;—those which have come down to us as parts of our constitution, civil or religious, or as embodied in a chain of legislation extending from his time to our own. The great event of his reign was THE REFORMATION—"one of the greatest events in history."³ The whole course of his policy, as it affected posterity, and not only of his, but of all the subsequent Tudor sovereigns, sprang out of the Reformation. It was their mission to apply its principles to civil government; and although they did not perform their task with much, if any, regard to the rights of conscience, it is fair to attribute their failure in that respect to the ignorance of those sacred rights, that prevailed in the age in which they reigned. But although successively engaged,

¹ Hallam's Constitutional History, vol. i. p. 25, citing Lodge, p. 80.

² 35 Henry VIII., cap. 12, A.D. 1543. ³ Hume's History, ch. 24.

under Providence, in the same design, they had separate parts assigned to them to perform. To Henry the work of demolition was given, to Elizabeth that of reconstruction; whilst Edward VI. and Mary represent the oscillation of the ancient fabric before its fall.

Henry had no love or predisposition for his part. It was forced upon him by circumstances. For the first twenty years of his reign he was a faithful son of the Roman Catholic Church; and at the announcement of Luther's doctrines, he controverted them in a book that obtained for him from the pope, the title of "Defender of the Faith," which still ornaments our regal crown. He was stimulated to the changes which he made in the national religion, by the circumstances in which he was involved, in the middle period of his reign, and when his wishes and passions were obstructed by the pope. He had no admiration of the principles of the Reformation; the changes he made renounced few or none of the doctrines of Rome, and when he rejected the pope, he transferred the spiritual authority to himself. But Henry's initiatory step was the turning-point of the fortunes of England, at a most important epoch of the world's civilization.

Connected, however, with Henry's religious policy, there was a part which he undertook with less reluctance than his contest with the pope;—the emancipation of the people from the abuses and exactions of the spiritual courts, and the termination of the distinction between clergy and laity in the civil courts. The pope and the clergy recovered, in the reign of Henry VII., the influence they lost in the times of the Plantagenets; and they not only enjoyed complete immunity from the secular courts, but they used the spiritual courts so as to make them the sources of great oppression and discontent. It became common for persons after committing great crimes to get into holy orders, to avoid punishment, under the operation of the law of benefit of clergy. The clergy, with Cardinal Wolsey at their head, had influence enough to prevent interference with their

privileges; and they had for some time tried to induce the king to admit their entire immunity from the civil courts; when a case arose which showed the injustice of such an immunity, and called forth from Henry a firm refusal of it. Richard Hunne, a merchant-tailor, having taken some proceeding in a civil court, against a clerk, for illegal extortion, was, by way of retaliation, prosecuted in the bishop's court for heresy; and having been committed to the bishop's prison, he was found murdered there. It was discovered that the murder had been committed by the bishop's sumner and bellman, with the concurrence of his chancellor. The chancellor and sumner were indicted in a criminal court for the murder. The king was appealed to, and strongly urged to defer the trial, which, it was alleged, could not safely be entrusted to a jury of laymen; and in order that the bishops and clergy might have time to refer to the court of Rome the question—whether submission to the civil courts was consistent with the laws of God, and the liberties of holy Church. This appeal gave the king an opportunity of declaring his sentiments on this important subject; and supported by the chief justice, and some of the clergy, he said, "By the permission and ordinance of God, we are king of England; and the kings of England in times past never had any superior but God only. Therefore, know you well, that we will maintain the right of our crown, and of our temporal jurisdiction, as well in this as in all other points, in as ample a manner as any of our predecessors have done before our time."¹

The history of Henry's contest with the pope should be read in detail in the works of the historians. It will suffice here to state the leading events, in the order and with the dates of their occurrence, that the legislation which ensued, by which the power of the pope in England was overthrown, may be traced to its proximate causes, and connected with the events that called it forth. It was a long and wary struggle between the king and Pope Clement VII., through

¹ Burnet's History of the Reformation, book i. part 1, *passim*.

the means which each possessed of persuading or intimidating the other—one to obtain, the other to withhold the pope's bull or decree, to declare Henry's marriage with his brother Arthur's widow, Katherine of Arragon, null and void, as a marriage within the degrees of consanguinity prohibited by the law of God. Before the marriage took place, there had been doubts of its legality; but these were removed by a bull of the then reigning pope, Julius II., dispensing with the objections to its validity, and authorizing the marriage. After the lapse of twenty years, and whilst his daughter, the Princess Mary, was heir presumptive of the throne, as the only issue of the marriage, Henry had doubts of its validity;—involving the serious question of the legitimacy of the princess, and therefore of the succession to the throne. But such doubts, it is reasonable to suppose, were greatly aggravated by Henry's abated affection for Katherine, now in ill-health and advancing in years, and by his having been inflamed by the beauty of Anne Boleyn, whom he desired to marry. Henry applied to the pope, in 1527, for a bull that his marriage with Katherine should be declared void, as originally contrary to the laws of God, and therefore not capable of being subsequently rendered good even by papal authority. But the pope, supported and instigated by the Emperor Charles V., the nephew of Katherine, and dreading to encounter his hostility to the family of the Medici, of which the pope was a member, temporized and procrastinated. Henry was too faithful a son of the Church, and perhaps too fearful of its power, when supported by the emperor, to take any rash or violent step; but, at length, his ambassador at Rome obtained from the pope a bull authorizing two legates, Cardinal Campeggio, who was also Bishop of Salisbury, and Cardinal Wolsey, to hold a trial of the marriage. To give Henry confidence in the final result of the trial, Campeggio, before he set out from Rome, was furnished with a papal bull annulling the marriage, which he was authorized to show, but not to put in force without further orders. The trial was commenced

at the Blackfriars' Convent in London, on the 31st of May, 1529. Katherine was summoned, and appeared in person; but she refused to submit to the tribunal, and appealed to the court of Rome. The trial proceeded in her absence, and was procrastinated to the 23rd of July, when Campeggio prorogued it till the 23rd of October; before which time it was abandoned by Campeggio, by the order of the pope, without any sentence having been pronounced, and the queen's demand of an appeal to Rome was affirmed.

Wolsey lost the king's favour through the failure of the trial, and Thomas Cranmer now appears upon the scene, called from Jesus College, Cambridge, in consequence of Henry having been told of a scheme he had suggested for influencing the pope, or at least for justifying independent action. The advice which he gave to the king, was to submit the question of the lawfulness of marriage with a brother's widow, to the principal foreign, and to the English universities. That advice was followed: several of the universities of Europe gave their decision in the king's favour; the universities of Oxford and Cambridge alone hesitated; but they finally pronounced an opinion conformable to that of the universities of Europe. Cranmer became Archbishop of Canterbury in 1533. The king had gained confidence by the uniform opinion of the universities in his favour, and he instituted a court of inquiry, over which Cranmer presided, to decide upon the validity of the marriage. Cranmer pronounced sentence of divorce, on the 23rd of May, 1533. The king had married Anne Boleyn on the 14th of November, 1532; the marriage was publicly owned on the 12th of April, 1533, and she became the mother of Elizabeth on the 7th of September, 1533. After Henry was irretrievably committed to his course of action, the pope gave sentence, which was pronounced at Rome on the 23rd of March, 1534. The Conclave was in a rage, and urged the pope to extreme measures against Henry; but Clement, probably unwilling to strike a blow which should render impossible the restoration of England under the papal power, contented himself, for the

present, with declaring the nullity of Cranmer's sentence, and of the second marriage; and he only threatened excommunication if, before the 1st of November following, Henry did not replace everything in the condition in which it formerly stood.¹

These dates will enable a comparison to be made of the course of Henry's legislation, with the progress of his suit at Rome. Whilst the issue of it was uncertain, Henry summoned a parliament, which assembled in London on the 3rd of November, 1529. No parliament had met for nearly seven years. The pope had so temporized and procrastinated, that Henry's temper was roused, and there was imminent danger of a rupture between them; perhaps to be followed by war with the Emperor of Germany and the King of France, as supporters of the pope. Cardinal Wolsey was disgraced, and Henry was thus relieved from the councils of a cardinal of Rome. The new ministers, especially Cranmer, were favourers of the Reformation. It was now the object to conciliate the people, and to have all secure at home, in order to proceed more confidently abroad in the negotiations still pending. The parliament which so assembled, was continued, by prorogations, for seven years. The whole work of demolition was done by the same parliament. The commons were the principal movers and actors; and they evinced their willingness to undertake the work, by presenting, soon after their first meeting, a petition to the king, containing severe reflections on the vices and corruptions of the clergy, "which were believed to flow from men who had Luther's doctrines in their hearts."²

In the first session of the parliament no attack was made on the authority of the pope; but three statutes were passed in restraint or diminution of the privileges of the clergy. The first of these acts restrained the power which the bishops exercised, of levying fees on the probates of wills. So long before as the reign of Edward III. the extortion of

¹ Hume's History, cap. 30, citing Le Grand, vol. iii. p. 566.

² Burnet's History of the Reformation, part 1, book 2, p. 133.

“the ministers of the bishops and ordinaries, in taking of the people grievous and outrageous fine for the probate of testaments,” called forth a statute, which empowered the king’s justices to inquire of such oppressions and extortions, and to hear and determine them, as well at the king’s suit, as at the suit of the party.¹ Another statute, in the reign of Henry V., imposed penalties upon the ordinaries for such extortions; but that statute endured but for one parliament, “by reason that the ordinaries did then promise to reform and amend their oppressions and exactions.”² The statute of Henry fixed the fees to be taken by the ordinaries and officials, for probates of wills, and grants of administration of intestates’ estates, on a graduated scale, according to the value of the property.³

The second statute was passed to regulate the fees paid to the clergy as mortuaries: the motive stated was “doubt as to the form of demanding mortuaries or corse-presents, which, as lately taken, were thought over-excessive to poor people.” Mortuaries were fixed on a graduated scale, according to the value of the property left by the deceased, the lowest mortuary fee to be three shillings and fourpence, and the highest ten shillings; it was not to be paid for a married woman, a child, for a person not keeping house, nor for a wayfaring man.⁴

The third statute was to disable the clergy from taking lands to farm, and from holding pluralities of livings. It prohibited spiritual persons, secular or regular, from taking or occupying, by lease or otherwise, lands to farm, and declared that leases to them should be void. It also prohibited them from entering into any kind of trade. It prohibited persons having one benefice with cure of souls, of the yearly value of £8 or above, from accepting any other; and if inducted into a second benefice, the first should be void, and the patron might present. It imposed penalties

¹ 31 Edward III., stat. i. cap. 4.

² 3 Henry V., cap. 8.

³ 21 Henry VIII., cap 5, A.D. 1529.

⁴ 21 Henry VIII., cap. 6, A.D. 1529.

on those who should procure, at the court of Rome or elsewhere, a license or dispensation to hold more than one benefice; but it empowered the lords spiritual and temporal, and certain of the king's officers and judges, and some others of lower rank, to have chaplains, (the number varying according to rank,) and their chaplains were privileged to hold two benefices.¹

The parliament held in 1530 passed no statute either against the clergy or the pope, but in the session of 1531 the attack upon the privileges of the clergy was renewed. The first series (which we have noticed) referred to their personal privileges, the next act was directed against their ecclesiastical authority. It is called, "An Act to restrain the Abuses of the Ecclesiastical Courts." "Great number of the king's subjects, (the preamble states,) men, wives, and servants, dwelling in divers dioceses of England and Wales, are cited to appear in the court of Arches, and other high courts of the archbishops, far from their dwellings, and many times, to answer feigned causes, suits of defamation, withholding of tithes, and such-like causes and matters, sued more for malice and for vexation than any just cause of suit; and not appearing, they are excommunicated, or at least suspended from all divine services, and can only be absolved on payment of the fees of court." The citation of a person out of the diocese in which he lived, was declared illegal, except in the cases of spiritual persons for spiritual offences; of appeals from the bishops' courts, and for heresy.²

In the same parliament we find the first statute that was directed expressly against the pope. Henry was waiting, and his ambassadors at Rome were negotiating, for a favourable decision in his suit; and this statute was evidently put forth to indicate what might be expected if the pope procrastinated much longer. In the meantime its operation was suspended by postponing the royal assent; which Henry was empowered to give at his pleasure, by letters-patent

¹ 21 Henry VIII., cap. 13.

² 23 Henry VIII., cap. 9.

under the great seal. The pope is treated with outward respect, but full provision is made for depriving him of his authority and placing it elsewhere, in the event of the royal assent being given.

The object of the act was to deprive the pope of the revenue he enjoyed from the consecration of the English bishops, for which he received the first year's income of their sees, under the name of annates or first-fruits. It recites "that the pope's holiness, and his predecessors at the court of Rome, have taken of all archbishops and bishops elected, annates or first-fruits, which they were compelled to pay before they could receive the pope's bulls for their elections to be confirmed; insomuch that it is known that there had passed out of the realm, since the second year of King Henry VII., for the expedition of bulls of archbishoprics and bishoprics, £160,000 at the least. It ordained that payments of annates or first-fruits, and all manner of contributions for an archbishopric or bishopric, or for any bulls from Rome, should cease; and if any bishop paid annates or first-fruits to Rome, he should forfeit all his goods and lands to the king. If any person presented by the king to the pope to be a bishop, should be delayed at Rome by means of the pope's bulls, or should be denied the requisite bulls, then the person so presented should be consecrated in England by the archbishop of the province. If then delayed for lack of bulls from Rome, he should be consecrated by two bishops to be nominated by the king. Bishops so consecrated should be installed, accepted, and obeyed, and should enjoy their spiritualities and temporalities as completely as if they had obtained their bulls from Rome. And forasmuch as the king and the parliament did not intend to use, in this or any other like cause, extremity or violence, before gentle courtesy or friendship first attempted, they had therefore thought convenient to commit the final determination of the premises to the king, to move the pope's holiness amicably to compound, rather than to extinguish, the annates; or else by some friendly, loving,

and tolerable composition to moderate the same. The king was therefore empowered, by his letters-patent, before the beginning of the next parliament, to declare whether the premises should be a statute or not. But if it should appear to the king that the realm should continue to be burdened with the exactions, and that our holy father the pope do uncharitably proceed to excommunications, interdictions, or censures,—then that the king and all his spiritual and lay subjects, without any scruples of conscience, should lawfully minister throughout the realm all sacraments, ceremonies, or other divine services of the holy Church; and that such censures, excommunications, and interdictions, should not by the prelates, or spiritual fathers of this realm, be published, executed, nor divulged.¹

The parliament which met in 1532 continued the legislation against the pope. It aimed a blow at the chief source of the papal power, by the statute “For the Restraint of Appeals to Rome.” The preamble, in pompous language, designed perhaps to defy and intimidate the pope, announces “that the realm of England is an Empire, governed by one supreme head and king, unto whom a body politic, divided by names of Spirituality and Temporality, owe obedience, the former usually called the English Church. It refers to the laws of Edward I., Edward III., Richard II., and Henry IV., against the annoyance of Rome;² and that since those good statutes, inconveniences and dangers had arisen and sprung by reason of appeals to Rome, in causes testamentary, of matrimony and divorce, tithes, oblations, and obventions, to the vexation, costs, and charges of the king and his subjects, and to the great delay of justice, as parties commonly appealed to Rome for the purpose of delay. The statute declared that all spiritual causes arising within the realm—whether they concerned the king or his subjects,—should be heard and determined within the king’s jurisdic-

¹ 23 Henry VIII., cap. 20, An act concerning Restraint of Payment of Annates to the See of Rome, A.D. 1531.

² See *ante*, p. 143.

tion, and not elsewhere, in such courts, spiritual and temporal, as the case should require; any inhibitions, or excommunications, or processes from the see of Rome notwithstanding. Any person procuring from Rome any foreign process, should incur the penalties of *præmunire*. The course of appeal was declared to be from the archdeacon to the bishop, and from the bishop to the archbishop of his province. In any case touching the king, or his successors, the appeal should be to the upper house of convocation.¹

When the parliament assembled in 1533,² all hope of a reconciliation with the pope appeared to be at an end. Cranmer had pronounced sentence of divorce of Henry's marriage with Katherine, and his marriage with Ann Boleyn had been declared. Nothing could be looked for from the pope but excommunication, and perhaps sentence of deposition, for this contempt of his spiritual authority. It was now necessary to secure the allegiance of the English clergy, to bring the convocation under the power of the crown, and boldly to provide a new mode of consecrating the bishops; and then to deprive the pope of every vestige of power over, or pecuniary benefit from, the English nation.

A statute records the adherence of the English clergy, and their submission to Henry's spiritual authority. The clergy (it states) "not only acknowledged, according to the truth, that the convocation of the clergy was, always had been, and ought to be, assembled by the king's writ, but also submitting themselves to the king's majesty, had promised, *in verbo sacerdotii*, that they would never from thenceforth presume to attempt, allege, claim, or put in ure, enact, promulge, or execute, any new canons, constitutions, or ordinances, in the provincial or other convocation, without the king's assent and license. The statute prohibits any such

¹ 24 Henry VIII., cap. 12, For the Restraint of Appeals, A.D. 1532.

² This parliament assembled on the 15th of January, 1533 (Old Style, or 1534, New Style), and continued till the 30th of March following. The difference of Style must be recollected, or it would seem that Cranmer's sentence of divorce followed, and not preceded, this parliament.

act being done, upon pain of imprisonment and fine at the king's will. From Easter, 1534, there should be no appeals to the Bishop or See of Rome; but all appeals should be according to the statute made since the beginning of that parliament.¹ Appeals from the archbishops' courts should be made to the king in his court of chancery, and the king should appoint commissioners to hear such appeals. The penalties of *præmunire* were imposed on those who should sue appeals to Rome, or procure or execute any process from Rome.²

The act for non-payment of first-fruits to the Bishop of Rome, passed in 1531, and which has been described as held by Henry *in terrorem* over the pope, was re-enacted and confirmed in the parliament of 1533.³ The preamble states that "albeit the Bishop of Rome, otherwise called the Pope, had been informed and certified of the effectual contents of the act,—to the intent that by some gentle ways the exactions might be redressed and reformed,—yet nevertheless the Bishop of Rome hitherto had made no answer of his mind therein to the king's highness, nor devised nor required any reasonable ways to and with the king for the same; wherefore his majesty had put his royal assent to the act, by his letters-patent, under his great seal." Therefore, in order to express in what manner and fashion archbishops and bishops should be elected and consecrated, it was enacted that no person should be thereafter presented, nominated, or commended to the Bishop or See of Rome for the dignity or office of archbishop or bishop,—nor should procure any bulls nor pay any annates or first-fruits to Rome,—but all such bulls and payments should utterly cease and be no longer used within the realm. But at every avoidance of an archbishopric or bishopric, the king might grant to the dean and chapter of the cathedral church where the see

¹ 24 Henry VIII., cap. 12, *ante*, p. 179.

² 25 Henry VIII., cap. 19, The Submission of the Clergy and Restraint of Appeals, A.D. 1533.

³ See *ante*, p. 177.

should be void, a license under the great seal, to proceed to election of an archbishop or bishop,—with a letter missive containing the name of the person whom they should elect and choose; and him they should choose, and none other. If they should defer their election for twelve days, the king should elect by letters-patent under the great seal. Every person so elected, suing his temporalities out of the king's hands, and making a corporal oath to the king, and to none other, should be thrononized or installed, and should have the profits spiritual and temporal belonging to the bishopric.¹

The same parliament passed an act to put an end to the numerous ways by which money flowed from the kingdom to the pope, and it also substituted authority in lieu of that of the pope, for granting licenses, dispensations, and various other instruments then deemed necessary for carrying on the spiritual affairs of the kingdom. It is founded “on the petition of the commons, who informed the king that his subjects were greatly decayed and impoverished by the intolerable exactions of the Bishop and See of Rome, the specialities whereof were over-long, large in number, and tedious to be inserted;² wherein the Bishop of Rome had not only to be blamed for his usurpation, but for his abusing and beguiling the king's subjects,—pretending and persuading them that he had power to dispense with human laws in causes which were called spiritual,—whereas your grace's realm, recognizing no superior under God, but only your grace, hath been and is free from subjection to any man's

¹ 25 Henry VIII., cap. 20, An Act for the Non-payment of First-fruits to the Bishop of Rome, A.D. 1533.

² Nevertheless a long and curious list is inserted; viz.—pensions, censuses, Peter-pence, procurations, fruits, suits for provisions, and expeditions of bulls for archbishoprics and bishoprics, and for delegacies, and rescripts in causes of contentions and appeals, jurisdictions legantine, and also for dispensations, licenses, faculties, grants, relaxations, writs called *Per inde valere*, rehabilitations, abolitions, and other infinite sort of bulls, breeves, and instruments, names and kinds in great numbers heretofore practised and obtained.

laws ; but only to such as have been made within this realm to the wealth of the same ;—and not to the laws of any foreign prince, potentate, or prelate, which the king, the lords temporal, and commons in parliament have full power to abrogate, annul, amplify, or diminish, as to them shall seem meet for the wealth of the realm.” The statute, therefore, enacted that—forasmuch as your majesty is supreme head of the Church of England, as the prelates and clergy of the realm in their synods and convocations have recognized—no persons should pay any of the before-named impositions to the use of the Bishop or See of Rome, as they theretofore had used by the usurpation of the Bishop of Rome, and the sufferance of the king and his progenitors ; but all such payments to his use and his chambers, which he calleth Apostolic, by usurpation and sufferance, should cease. Neither the king nor his subjects should thenceforth sue to the Bishop of Rome, called the pope, or to the see of Rome, for any of the licenses and other instruments before described, accustomed to be obtained at Rome ; but thenceforth the Archbishop of Canterbury should have power to grant, by an instrument under his seal, all such licenses and other writings as before were obtained from the see of Rome. Children born of marriages solemnized by virtue of an archbishop’s license, should be legitimate. But the king, his nobles, and subjects did not intend, by the act, to decline or vary from the articles of the catholic faith in Christendom, or in other things declared by the Word of God necessary for salvation. The penalties of præmunire were imposed on those who should sue to Rome, for any licenses, bulls, or instruments forbidden by the act.¹

But Henry had not yet quite abandoned the possibility of a reconciliation, or at least an arrangement with Rome. This act provided that it was not to take effect until the feast of St. John Baptist (24th of June, 1534), unless he by his letters-patent declared his pleasure that it should take

¹ 25 Henry VIII., cap. 21, The Act concerning Peter-pence and Dis-pensations, A.D. 1533.

effect earlier. He was also empowered by the same means, and within the same period, to abrogate, annul, and repeal the act, or so much of it as he pleased.¹

The same parliament arranged the descent of the crown, by an "Act concerning the King's Succession." This makes express reference to all the great events, the sentence against the first marriage—the second marriage, and the birth of Elizabeth; and it purports to be made on the petition of the lords and commons. They point out the evils of ambiguity and doubts as to the succession, tending to great effusion and destruction of man's blood, nobles and subjects, when questions of succession have been moved and postponed,—“by reason whereof the Bishop of Rome, and see apostolic . . . hath presumed in times past to invest who should please them, to inherit in other men's kingdoms and dominions, which we, your most humble subjects, spiritual and temporal, do utterly abhor and detest.” It was then declared that the king's marriage with the Lady Katherine,—proved before Thomas, Archbishop of Canterbury, to have been the lawful wife of Arthur,—was against the laws of Almighty God, and void; and that the separation made by the archbishop was good and effectual. The Lady Katherine should be called and reputed dowager to Prince Arthur, and not queen—and “that the lawful matrimony solemnized between your highness and your most dear and entirely beloved wife, Queen Anne, shall be established, and taken for true and perfect ever hereafter, according to the just judgment of Thomas, Archbishop of Canterbury,—whose grounds of judgment have been confirmed, as well by the whole clergy of this realm, in both their convocations, and by both the universities thereof, as by the universities of Bonony, Padua, Paris, Orleance, Tolouse, Angiewe, and divers others; and also by the private writings of many right excellent well-learned men,—which grounds so confirmed, and judgment, and marriage with your lawful wife, Queen Anne, we your subjects, both

¹ §§ 28, 29.

spiritual and temporal, do accept, approve, and ratify for good, and consonant to the laws of Almighty God." The imperial crown of England was then entailed on Henry, and the sons of his body by Queen Anne, or if she died without issue male, on his sons by any succeeding queen; and in default of issue male, then on the issue female of Queen Anne, and first to the eldest issue female, the Lady Elizabeth, and the heirs of her body, lawfully begotten. For the sure establishment of the succession according to the act, as well the nobles spiritual and temporal as other subjects, at their full ages, by the commandment of the king, and at all times when he should appoint, should make oath in the presence of the king, or before such others as he should appoint, truly, firmly, and constantly, and without fraud or guile, to observe, fulfil, maintain, defend, and keep the whole effects and contents of the act. All subjects spiritual and temporal suing lises, restitutions, or *ouster-le-main*, out of the hands of the king, or doing any fealty by reason of the tenure of their lands, should swear a like oath. And if any person commanded to take the oath should refuse, he should be an offender in misprision of treason, and suffer accordingly.¹

Whilst the parliament of 1533 was passing the acts we have just described, there was, at Rome, full hope and

¹ 25 Henry VIII., cap. 22. As this settlement of the succession to the crown led to no constitutional changes, the crown having descended, after the death of Henry, in strict conformity with the laws of descent, we may dispose of this part of the subject by stating that after the death of Anne Boleyn, an act was passed (28 Hen. VIII., cap. 7) settling the crown on the issue of Queen Jane Seymour, and in default of such issue, empowering Henry to appoint his successor. After the king's marriage with Katherine Nevill, another act (35 Hen. VIII., cap. 1) recognized the succession to the crown as then being in Prince Edward, son of the late Queen Jane, and if the king and Prince Edward should die without heirs, the crown should remain to the Lady Mary, daughter of Katherine of Arragon, with remainder to the Lady Elizabeth. The king was empowered to limit the succession of the crown, in reversion or remainder, by letters-patent or will, in case of failure of issue of the Ladies Mary or Elizabeth.

expectation that the quarrel would be adjusted. Amongst the various changes, brought about by the self-interested policy of monarchs, it had come to pass that the emperor and the pope had become divided; and Francis I., King of France, stepped in to mediate an accommodation between Henry and the pope. This had succeeded so far that an arrangement had been made, that if Henry would submit his cause to the Holy See, and sign a written agreement to that effect, the pope would appoint a consistory, from which (to satisfy Henry) the cardinals of the imperial faction should be excluded, and which should decide in favour of Henry's demands. A day was fixed for the delivery of Henry's written promise at Rome, but the courier was detained beyond the day appointed; and in the meantime news was brought to Rome that the pope and cardinals were treated with derision in England. They entered the consistory, inflamed with anger, and a precipitate sentence was pronounced, that the marriage of Henry and Katherine was valid, and Henry was declared excommunicated if he refused to adhere to it.

This negotiation explains the power reserved to Henry to annul the act prohibiting all payments to Rome; but it seems improbable that the reconciliation should have failed from so slight a cause as that mentioned. The derision of the people could not be more pungent or expressive than the contemptuous language employed against the pope in the acts of parliament; and we may accept, perhaps, Hume's solution of this inconsistency, that Henry "either entertained little hopes of success, or was indifferent about the event."¹

The parliament which met on the 3rd of November, 1534, occupied itself in investing Henry with the power of his new position as head of the Church. It opened with an act, declaring "the king's grace to be authorized supreme head." The recognition by the convocation of Henry as supreme head of the Church received statutory

¹ Hume's History, cap. 30, *passim*.

sanction in the parliament of 1533; it was now, therefore, to be declared as existing law. The act states that "although the king is, and ought to be, the supreme head of the Church of England, and was so recognized by the clergy in their convocation, yet for corroboration and confirmation thereof, and to repress and extirpate all errors, heresies, and other enormities and abuses theretofore used, it was enacted that the king, and his heirs, should be taken, accepted, and reputed the only supreme head on earth of the Church of England, and should have and enjoy, annexed and united to the imperial crown, as well the title and style thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities, to the dignity of supreme head of the Church belonging; with full power and authority to visit, repress, redress, reform, order, correct, restrain, and amend all errors, heresies, abuses, offences, contempts, and enormities.'

The last statute was immediately followed by one establishing the oath to be taken to observe it. Referring to the oath required by the Act of Succession, and to its form—to bear faith, truth, and obedience to the king, and to his heirs by Queen Anne, or to his heirs according to the limitation of the Statute of Succession, and not to any other within the realm, nor foreign authority or potentate—it enacted that every subject should be bound to take and accept such oath for the maintenance and defence of the same act.²

This oath laid the foundation of a cruel episode in the history of the times. Acknowledgment of the succession, as settled by the new law, implied a repudiation of the pope's spiritual power. The oath was, however, generally taken throughout the kingdom. Some, who entertained conscientious scruples about its import, refused it, and were tried and executed for high treason. Amongst the most eminent victims were Sir Thomas More, and Fisher, Bishop of Rochester. Sir Thomas More had no scruples about the temporal succession, but could not, although strongly urged

¹ 26 Henry VIII., cap. 1, A.D. 1534.

² *Idem*, cap. 2.

by Cranmer and others, assert the legality of the marriage with Anne Boleyn; still less could he, when on his trial, admit, as a rigid Catholic, that Henry had superseded the pope as head of the Church. Some Charterhouse monks refused the oath, and were executed in their ecclesiastical dress, and without having undergone the previous ceremony of degradation from holy orders. "It was," says Hume, "a high instance of tyranny, to punish the mere delivery of (or rather the refusal to express) a political opinion, especially one that nowise affected the king's temporal right, as a capital offence, though attended with no overt act; and the parliament, in passing this law, had overlooked all the principles by which a civilized, much more a free people, should be governed."¹

The same parliament proceeded to give to Henry some tangible advantages, by transferring to him the first-fruits and tenths which before were enjoyed by the pope. The king, "being now not only supreme head of the Church, but also the natural sovereign, liege lord, and king, he and his successors should have and enjoy from all persons appointed to any dignity, benefice, office, or promotion spiritual, (from an archbishopric to a free chapel,) the first-fruits, revenues, and profits thereof, for one year, to be paid, or secured by good sureties, before possession taken; and also one yearly rent or pension, amounting to the value of the tenth-part of all the revenues, rents, farms, tithes, offerings, emoluments, and of all other profits of such spiritual property, to be paid yearly at Christmas." Commissioners were to be appointed for levying the first-fruits and tenths.² But in the following session of parliament, "for the entire and hearty love that his grace bore to the prelates and other incumbents, they were excused from the tenths in the same year that they paid their first-fruits."³

The principal proceeding of the parliament of 1535 was

¹ Hume's History, cap. 31.

² 26 Henry VIII., cap. 3.—The Bill for the first-fruits, with the yearly pensions to the king, A.D. 1534.

³ 27 Henry VIII., cap. 8.

the dissolution of the smaller monasteries. Their dissolution, and the acquisition of their lands by the crown, had been contemplated as the result of the separation from Rome, and preliminary measures were taken to prepare the nation for a disruption of these ancient establishments; which, however abused, were greatly cherished both by rich and poor. The king created Thomas Cromwell (who became his chief minister and confidant after the death of Wolsey) Lord Vicegerent of the king in all his ecclesiastical jurisdiction. Commissioners were appointed for a general visitation of the monasteries; and they made a report, known as the black-book of the monasteries, which was laid upon the table of the house of commons, and was adopted as the basis and justification of the legislation. The character of the report may be traced in the act of parliament, which dealt with the smaller monasteries, designated "as not having lands of two hundred pounds by the year, and where the congregation of religious persons is under the number of twelve persons." The preamble imputes to the inmates the grossest immorality. "Manifest sin, vicious, carnal, and abominable luxury, is daily used and committed in such little and small abbeys, priories, and other religious houses of monks, canons, and nuns. Amendment has been long tried, but their vicious living shamelessly increaseth and augmenteth." The remedy proposed was "to suppress such small houses, and that the religious persons therein be committed to great and honourable monasteries of religion of this realm, wherein (thanks to God) religion is right well kept and observed." The statute then gave to the king all the monasteries, priories, and religious houses, not having lands above £200 a year, with all their lands, tithes, and tenelements, and all their ornaments, jewels, goods, movables, and debts; and it prepared the way for future grants of this property by the king, by declaring that all who should have letters-patent of any of the lands should enjoy them according to the purport and effect of the letters-patent.¹

¹ 27 Henry VIII., cap. 28, A.D. 1535.

Four years afterwards the larger monasteries, notwithstanding their eulogy in the preceding act, were dissolved. The statute which dissolved them recites that the abbots, priors, abbesses, and prioresses, had, "of their own free and voluntary minds, goodwills, and assents, without constraint, coaction, or compulsion, renounced their monasteries, abbeys, and priories, and it declared that the same should belong to the king. The statute also gave to the king all ornaments, jewels, goods, chattels and debts, belonging to these monasteries; and it confirmed all the king's previous grants of the lands by his letters-patent, and his future grants to be made within three years.¹

The wealth acquired by the king, through the dissolution of the monasteries, was very great. The clear yearly value of the lands was estimated at £131,607, and by some authorities at much more. The movables of smaller monasteries, alone, were estimated at £100,000. The people's acquiescence was conciliated by a belief that this accession of wealth would enable the crown to meet all its exigencies, without recourse to taxation. Henry, however, distributed the lands amongst the nobility and gentry, or amongst successful merchants and traders; to some as gifts, to others at low prices; and by the wealth thus diffused, new families were raised to distinction, and the opulence of ancient families was increased. The liberation of so much property from the inertness of monastic rule, and from the course of rigid corporate succession, and its distribution amongst persons through whom a large portion of it would, in time, become diffused through all classes of the people, could not but be a general advantage to the nation; whilst the new and wealthy families aided the civil constitution by the increase of the aristocratic element, at that time reduced too low to be a sufficient balance to the prerogative of the crown.²

¹ 31 Henry VIII., cap. 13, A.D. 1539.

² Mr. Hallam observes, "that those families within or without the bounds of the peerage, which are now deemed the most considerable, will

For collecting the new revenues a new court was erected, called the "Court of the Augmentations of the King's Revenue," which was to consist of a chancellor, a treasurer, an attorney and solicitor, with ten auditors, seventeen receivers, a clerk, an usher, and a messenger. This court was to collect and receive the revenues of the lands of dissolved houses, excepting those which the king had disposed of by his letters-patent.¹

Henry, now supreme head of the Church of England, proceeded to declare the dogmas of the new religion. He submitted six articles or questions to the parliament, and to the convocation, by the latter to be especially debated and answered; and the parliament passed an act establishing the articles so resolved upon.—1, The real presence at the sacrament;—2, Communion in one kind only;—3, That priests may not marry;—4, That vows of chastity or widowhood ought to be observed;—5, That private masses be continued in the English Church,—and 6, Auricular confession. Any person preaching, teaching, or holding opinion contrary to the first article should be adjudged a heretic, and suffer death by burning, and forfeit all his land and goods, as in case of high treason; and so acting contrary to the other articles, should suffer death, and forfeit lands and goods, as felons. Commissions were to be granted to bishops and their chancellors and officers; and justices of the peace, and stewards in their leet had authority, by the oaths of twelve men, to inquire of all the heresies, felonies, and offences aforesaid.²

Henry's contest with the pope was thus complete. He

be found, with no great number of exceptions, to have first become conspicuous under the Tudor line of kings; and if we could trace the titles of their estates, to have acquired no small portion of them, mediately or immediately, from monastic or other ecclesiastical foundations." (Hallam's Constitutional History, vol. i. cap. 2. pp. 77-78.)

¹ Parl. Hist. vol. iii. p. 117.

² 31 Henry VIII., cap. 14, A.D. 1539, An Act for Abolishing of Diversity of Opinions in certain Articles concerning Christian Religion.

had defeated his enemy, had taken his spoils, and possessed himself of his power. Clement VII. died six months after he pronounced the sentence against the king, and was succeeded by Paul III., who, when cardinal, had always favoured Henry's cause. But the execution of Fisher,—raised to be a cardinal whilst he lay in prison,—roused the pope, so that immediately after hearing of the execution of More and Fisher, he passed the sentence of excommunication upon Henry in its severest form. But he delayed its publication, till he could persuade the emperor to carry out the sentence by invading the kingdom. Queen Katherine died on the 6th of January, 1536; and her death removing from the emperor's mind the feeling of personal animosity against Henry, he, instead of invading him, sent proposals that there should be a return to their ancient amity; but imposing a condition that Henry should be reconciled to the see of Rome. Henry replied that the proceedings against the Bishop of Rome were so just, and so fully ratified by the parliament, that they could not be revoked.¹

We now proceed to review the alterations made in the civil constitution during the reign of Henry, and these were neither few nor inconsiderable.

An act was passed constituting the Court of Wards. Its purpose, as stated in the preamble, was, that as his majesty was likely to be yearly answered of great rents, revenues, and profits, by reason of persons as should be in ward to his highness, as also by means of idiots, and fools natural, remaining in his grace's custody; and also for licenses to marry, made to women, his grace's widows; and fines made by them for marrying without his license; all which pertain to the king in right of the imperial crown of this realm; and to the intent that the king should be better served, in having the custody of his wards and their lands during their minority;—the king constituted the court of wards, as a court of record, with a common seal, to be under the jurisdiction of one person, to be called the master of the same

¹ Hume's History, cap. 31.

court. A body of officers, consisting of counsel, attorneys, receivers, auditors, clerks, surveyors, and feudances, was appointed, with power to take possession of the wards' lands, to sell the wardships during minority, to survey all the king's widows, and to conclude with those who had married without the king's license, for reasonable fines to the king's use; and to survey, govern, and order the lands of idiots, and natural fools, and to let their lands; the finding and keeping of such persons, their wives and children, and the repairs of their houses and lands, being always considered.¹

The dissolution of the monasteries had an immediate effect upon the house of lords, as by it, twenty-six parliamentary abbots, and two parliamentary priors, lost their baronies and their seats in that house. This so much changed the relative numbers of the spiritual and temporal peers, that at the parliament which met, after the last dissolution, on the 13th April, 1539, there were present only twenty spiritual peers, with forty-one temporal peers.²

The absence of the abbots and peers was in part supplied by the creation of new bishoprics. Henry, by letters-patent, in the twenty-third year of his reign, created the bishopric of Chester by separating the city and county of Chester from the diocese of Coventry and Lichfield, of which it formed part; and by adding the county of Lancaster and the archdeaconry of Richmond in the diocese of York. He also created, at the same time, the bishoprics of Gloucester and Peterborough, and in the next year those of Oxford and Bristol.

The county palatine of Chester was, up to this period, excluded from parliamentary representation. An act, passed on the petition of the inhabitants of the county, conferred on it the right of sending members to parliament—two knights for the county, and two burgesses for the city of Chester.³

Great changes were made in the relation of Wales to-

¹ 32 Henry VIII., cap. 46, A.D. 1540.

² Henry's History of England, vol. xii. p. 151.

³ 34 and 35 Henry VIII., cap. 13.

wards England. Up to that time the administration of justice in the principality was chiefly in the hands of the lords marchers, their officers and deputies; and in the course of this reign acts were passed directed to the improvement of the judicial system which they administered. These acts describe Wales as in a very lawless state; the people demoralized and depressed, and the power of the lords marchers, and their administration of justice, much abused. But by later acts the improvement of the old system was abandoned, and the English laws and judicial system were substituted for those of Wales. The lord chancellor was empowered to appoint justices of the peace, and justices of gaol-delivery, for the county of Chester, and the several counties of Wales.¹ Wales, it was declared, should be incorporated with England, and all persons born in the principality should enjoy and inherit all the freedoms, liberties, rights, privileges, and laws of England; and landed property should be inheritable after the English tenure. The lordships marchers in the dominion of Wales, described as "lying between the shires of England and those of Wales, and not being parcel of any shires," were united and annexed, some to the shires of England, and others to the existing shires of Wales. The residue were divided into new counties;—the counties of Monmouth, Brecknock, Radnor, Montgomery, and Denbigh. Other lordships were united and annexed to the English counties of Salop, Hereford, and Gloucester, and to the then existing Welsh counties of Glamorgan, Carmarthen, Pembroke, Cardigan, and Merioneth. County towns were appointed for the several counties, where the county courts were directed to be held, and where justice was to be administered and executed according to the laws, customs, and statutes of England,—and after no Welsh laws. The English language was ordered to be used in all law proceedings; no person being eligible to any office in England or Wales unless he used the English language. The county of Monmouth was em-

¹ 27 Henry VIII., cap. 5.

powered to send two knights, and the borough of Monmouth one burgess to parliament. The twelve counties of Wales were each empowered to send one knight; and every borough, being a shire-town, (except the shire-town of the county of Merioneth,) one burgess. The county of Monmouth was placed under the jurisdiction of the king's courts of Westminster, and the king was empowered to institute new courts of record, and to appoint justices for Wales.¹ Under this power, and by virtue of a statute passed a few years later,² courts of justice, called Courts of Great Sessions, were established; and these continued to administer justice in law and equity, and also in criminal matters arising within the principality, until the courts were abolished by statute³ in the year 1830, and Wales was put under the jurisdiction of the courts and judges of Westminster Hall.

Haverfordwest, a county of itself, (it was enacted,) should for ever find one burgess for the parliament, his charges to be borne by the mayor, burgesses, and inhabitants.

To restore to the crown some of its ancient prerogatives which had been granted away from it by the king's progenitors, an act was passed declaratory of the prerogatives. No person, but the king, should have any power or authority to pardon or remit treasons, murders, manslaughters, or felonies. All justices of eyre, justices of assize, justices of peace, and justices of gaol-delivery, should be made by letters-patent under the king's great seal; and the king's supreme authority, and the currency of the king's writ in counties palatine, and in other subordinate jurisdictions, were recognized.⁴

The offence of high treason was extended in this reign to many cases far beyond the ancient statute of treason of Edward III. Henry also caused a statute to be passed, empowering the king for the time being, with the advice of

¹ 27 Henry VIII., cap. 26 (1535).

² 34 and 35 Henry VIII., cap. 26 (1542-3).

³ 11 George IV. and 1 William IV., cap. 70.

⁴ 27 Henry VIII., cap. 24.

his council, to issue proclamations, under pains and penalties to be observed as though they were made by act of parliament.¹ It was amongst the earliest acts of Edward VI. to repeal all such of the treasons of this reign as were carried beyond the ancient statute, as well as the unconstitutional act for proclamations.

Amongst the general body of the statutes of this reign, two may be noticed for adapting the law to the exigencies of society. A statute was passed which enacted that all persons seised in fee-simple (except married women, infants, idiots, and persons of nonsane memory) might devise by will and testament two-thirds of their lands held in chivalry, and the whole of their lands held in socage.² Another is the first bankrupt-law that appears in the statute-book.³

¹ 31 Henry VIII., cap. 8; repealed 1 Edward VI., cap. 12.

² 32 Henry VIII., cap. 1., explained by 34 Henry VIII., cap. 5.

³ 34 & 35 Henry VIII., cap. 4.

CHAPTER XI.

EDWARD VI.

1547-1553. Reigned 6 years.

Character of the Legislation of this Reign.—First Parliament.—Protestant Principles enforced.—Sacrament in both kinds.—Unconstitutional Acts of Henry VIII. repealed.—Act of Uniformity of Common Prayer.

OUR purpose does not require any minute examination of the legislation of the reigns of Edward VI. and Mary. For the most part it was temporary, subverting and subverted. Edward, son of Henry VIII. by Jane Seymour, ascended the throne on the 28th of January, 1547, being then but nine years old. He was placed, during his minority, by his father's will, under the protection of a council, of which his uncle, whom he created Duke of Somerset (usually styled the Protector Somerset), and Archbishop Cranmer, immediately became the controlling members. They favoured the Protestant religion, in which they were ardently supported by Edward; and they enforced the profession and exclusive adoption of Protestant principles and doctrines. After a reign of six years, Edward was succeeded by his half-sister Mary, daughter of Katherine of Arragon, educated in the strictest principles of the Romish religion. Immediately on her accession, she caused all the statutes of Edward, establishing the Protestant religion, to be repealed, and she employed her short reign in restoring the papal power, the Roman Catholic institutions, and the exclusive profession and adoption of the Roman religion. As these were again

overturned by Elizabeth, as soon as she succeeded to the throne, the legislation of the reigns of Edward and Mary became, for the most part, merged in that of Elizabeth. There was one exception, however,—the act for the uniformity of common prayer, passed by Edward, was revived by Elizabeth, and still remains the basis of the authority by which the Book of Common Prayer is now used in the Church of England.

Edward's first parliament met on the 4th of November, 1547, and its first statute was to establish Protestant views concerning the administration of the sacrament. After declaring that it was more agreeable to the first institution of the sacrament, and the practice of the apostles, that it should be ministered to the people in both kinds, of bread and wine, than under the form of bread only; and that the people should receive it with the priest, and that the priest should not receive it alone, a law was made to that effect.¹

The same parliament overthrew some of the unconstitutional laws of Henry VIII. It abolished all new-made treasons since the statute of Edward III.; and by a very sweeping clause, it repealed all previous statutes concerning religious opinions, and concerning doctrine or matters of religion. It repealed the act of Henry giving his proclamations the force of laws. But it imposed heavy penalties, and for the third offence made it high treason to preach or affirm *in words*,—and for the first offence, high treason to affirm *in writing*,—that the king was not head of the Church, or that the pope was. It repealed all offences made felony since the statute 21 Henry VIII. It took away the benefit of clergy and sanctuary from persons convicted of murder, of poisoning, of house-breaking, of highway-robbery, of horse-stealing, and of robbing from a church; but it declared that a lord of parliament, or peer of the realm, should of common grace have benefit of clergy, though he could not read, without

¹ Statute 1 Edward IV., cap. 1, an act against such as shall unreverently speak against the sacrament of the altar, and the receiving thereof under both kinds.

any burning in the hand, loss of inheritance, or corruption of blood, for the first offence. It extended the benefit of clergy to cases of bigamy, and it gave protection to persons arraigned for high treason, by enacting that no conviction should take place, unless the offender be accused by two witnesses, or should willingly, without violence, confess the same.¹

The parliament granted to Edward the duties of tonnage and poundage for his life.²

In the second session of Edward's parliament, was passed the "Act for Uniformity of Service and Administration of the Sacraments throughout the Realm." Although repealed by Mary, it was revived by Elizabeth, and thus became again the law of the land. It appears from the preamble that "there had been divers forms of common prayer, those of Sarum, of York, of Bangor, and of Lincoln; and besides these, sundry forms and fashions had been used for morning prayer and evensong, in the holy communion, commonly called the Mass, and in the other sacraments of the Church; and although the king, with the advice of his uncle the Lord Protector, and others of his council, had desired to stay innovations or new rites, they had not had such good success as his highness desired. Whereupon his highness, being pleased to bear with the weakness and frailty of his subjects, and of his great clemency, had been not only content to abstain from punishment of offenders,—for that they did it of a good zeal,—but also to the intent a uniform, quiet, and godly order should be had, had appointed the Archbishop of Canterbury, and certain bishops and learned men, to draw and make one order, rite, and fashion of common and open prayer, which, by the aid of the Holy Ghost, with one uniform agreement, was concluded and delivered to his highness." The act therefore directed that all ministers,

¹ 1 Edward VI., cap. 12. It repealed the acts 5 Richard II., stat. 1, cap. 6; 2 Henry V., cap. 7; 25 Henry VIII., cap. 14; 34 & 35 Henry VIII., cap. 1.

² 1 Edward VI., cap. 13.

in any cathedral, parish, or other church, should, from the next feast of Pentecost, be bound to say and use all their common and open prayer in the order and form mentioned in the book, and no other. Penalties were imposed on those who refused to use, or who spoke in derogation of, the Book of Common Prayer.¹ By a later act, of the same reign, all persons were required to resort to the parish church, on Sundays and holidays; and penalties were imposed on those who were willingly present when any other forms of worship but of common prayer were used.²

¹ 2 & 3 Edward VI., cap. 1, A.D. 1548.

² 5 & 6 Edward VI., cap. 11.

CHAPTER XII.

MARY.

1553–1558. Reigned 5 years.

Principle of Government announced.—Restoration of the Roman Catholic Religion.—The Laws of Edward VI. repealed.

MARY ascended the throne on the 6th of July, 1553. She opened her statute-book with an act to “Repeal and take away Treasons, Felonies, and cases of Præmunire.” The principle of government which she announced (in the preamble) was, “that the state of a king standeth more assured by the love and favour of the subject towards their sovereign, than in the dread and fear of the laws made with rigorous pains and extreme punishment;” . . . and that “laws made without extreme punishment are more often obeyed than laws made with extreme punishment.” She therefore repealed all offences made treason, but those declared in the statute of Edward III.¹ In the face of these humane principles she has descended to posterity as “*bloody Mary*.”

Being the first queen regnant of England since the Conquest, an act was passed to declare that “the royal power and dignities vest in a Queen the same as in a King.”² The parliament granted her the subsidy of tonnage and poundage for her life.³ She married Philip, King of Spain, and having given him the title of king, they together overthrew the Protestant religion, and all its adjuncts, by an act for repealing all articles and provisions made against the see apostolic of Rome, since the twentieth year of King Henry VIII., and for the establishment of all spiritual and ecclesiastical possessions and hereditaments conveyed to the laity. The preamble stated that, “since the twen-

¹ 1 Mary, c. 1. ² 1 Mary, sessio tertia, c. 1. ³ *Idem*, stat. 2, c. 17–18.

tieth year of Henry VIII., much false and erroneous doctrine hath been taught, preached, and written, partly by divers the natural-born subjects of this realm, and partly brought in hither from sundry or other foreign countries, and hath been sown and spread abroad with the same." Thereupon the parliament supplicate their majesties that, by their grace's intercession and mean with the cardinal (Cardinal Pole), the pope's legate, it be exhibited to the pope that they declare themselves very sorry and repentant of the schism and disobedience against the see apostolic, and that they are ready to repeal all the laws against the supremacy of the see apostolic, that they may, as children repentant, be nursed into the bosom and unity of Christ's church. The statute then repeals all the acts passed in the reigns of Henry VIII. and Edward VI., against the supremacy of the see apostolic, since the time of the schism. It was not possible, however, to restore the church property that had been granted away, and it was provided that lands and goods of bishoprics, monasteries, and chantries dispersed since the schism, should so continue; and the statutes by which they were granted to the crown were confirmed.¹

In this reign a change was made in the management of the military power of the country. A standing army was ever contrary to the laws and constitution of the kingdom, and it was not until the reign of Henry VII. that the kings of England had so much even as a guard about their persons. But although there was no standing force, there was, in the Saxon institutions, a provision for calling out the people, in time of need, as a national militia; and, after the Conquest, the king had it in his power to call out his military tenants to defend the kingdom. The reduction of the amount of military service by tenure,—which resulted from the commutation of personal service for a pecuniary compensation, in the reign of Henry II.,—seems at length to have become so considerable, as to render that force insufficient for the defence of the realm; and the frequency, if not the origin, of

¹ 1 & 2 Philip and Mary, cap. 8, A.D. 1554,

commissions of array, of all the freemen in every county, has been supposed to be the consequence of that decrease.¹ By these commissions, the sheriffs, or justices of the peace, or special commissioners of array, were empowered to muster the people in the several counties; and a statute of Edward I. obliged every man, between fifteen and sixty, to provide himself with arms, according to the quantity of his lands and goods. The constables were empowered to see that the arms were provided, to report defaults to the justices, who were to present such defaults to the king in parliament. Sheriffs, and bailiffs of franchises, were to take good heed to follow the cry with the country, and to keep horses and armour so to do.² These weapons were changed for those of modern use, by a statute of Philip and Mary; and, by another statute, penalties were imposed on those commanded to muster by the sovereign, or by any *lieutenant* authorized for the same; and absenting themselves without lawful excuse, and not bringing with them their best furniture, array, or armour.³ The lieutenant here referred to became the lord-lieutenant,—the chief military officer of the crown in each county.⁴

¹ Peers' Report, div. 3, p. 79. Blackstone's Comment., book i. cap. 13.

² Statute of Winchester, 13 Edward I., stat. 2, cap. 6, A.D. 1285.

³ 4 & 5 Philip and Mary, cap. 2. *Idem*, cap. 3.

⁴ Mr. Hallam describes the functions of the lord-lieutenant as follows:—"He was usually a peer, or at least a gentleman of large estate in the county, whose office gave him the command of the militia, and rendered him the chief vicegerent of his sovereign, responsible for the maintenance of public order. This institution may be considered as a revival of the ancient local earldom; and it certainly took away from the sheriff a great part of the dignity and importance which he had acquired since the discontinuance of that office. Yet the lord-lieutenant has so peculiarly military an authority, that it does not in any degree curtail the civil power of the sheriff as the executive member of the law. In certain cases, such as a tumultuous obstruction of legal authority, each might be said to possess an equal power, the sheriff being still undoubtedly competent to call out the *posse comitatús*, in order to enforce obedience. Practically, however, in all serious circumstances, the lord-lieutenant has always been reckoned the efficient and responsible guardian of public tranquillity." (Constitutional Hist., vol. i. p. 544.)

CHAPTER XIII.

QUEEN ELIZABETH, LAST OF THE TUDOR MONARCHS.

1558-1603. Reigned 45 years.

Protestantism Declared.—First Parliament.—Her Policy.—Three Religious Parties.—The Church of England.—The Puritans.—The Romanists.—Act of Supremacy.—High Commission Court.—Oath of Supremacy.—Act of Uniformity.—Derogation of the Common Prayer.—Attendance at Church.—Succession Confirmed.—First-fruits restored to the Crown.—Clergy tested by the Oath of Supremacy.—Effect of it.—Legislation concerning Religion.—Statutes against Popery.—Against Bulls from Rome.—To Regulate Admission into the Church of England.—Against Mass.—Against Jesuits.—Against Popish Recusants.—Against Puritans.—Civil Government.—Star-chamber.—High Commission Court.—*Ex-officio* Oath.—Martial Law.—The Rack.—The Queen's Power in Parliament.—Monopolies.—Elizabeth's Declaration concerning them.—Elizabeth's Popularity.—Peter Wentworth.—His Speech.—His Questions.—Originator of the Parliamentary Puritan Party.—Act for the Relief of the Poor.

ELIZABETH ascended the throne on the 17th of November, 1558. The Pope put in his claim, through Mary's ambassador at Rome, to retain the spiritual power that Mary had restored to him, declaring that England was a fief of the papacy, and that it was high presumption in Elizabeth to take the crown without his consent, especially as she was illegitimate; but his holiness gave her reason to expect that if she would refer herself wholly to him, she would receive all the favour that could consist with the dignity of the apostolic see. Elizabeth answered this remonstrance by recalling the ambassador. She ordered all that were impri-

soned on account of their religion to be put at liberty; and she set the example in her own person of religious worship according to Protestant principles, preparatory to the settlement of the national religion, to be made in parliament. She appointed ministers who were favourable to Protestantism: Sir William Cecil, her chief minister; Sir Nicholas Bacon, Lord Keeper; and Doctor Parker (who had been chaplain to her mother, Anne Boleyn), Archbishop of Canterbury.¹

Thus prepared, her first parliament assembled on the 25th of January, 1558-9, and continued in session until the May following, when it was dissolved. It was almost wholly occupied in passing statutes to confirm the queen's title to the crown, and restoring to it the ecclesiastical supremacy and jurisdiction by Mary vested in the pope. Thus she began her work of reconstruction; but in reviewing the statutes by which it was effected, we must remember that, unlike those of Mary, they were never overthrown by dynastical reaction; and that they established the national religion on the basis which still subsists.

The policy of Elizabeth opposed the advance of the liberal principles of the constitution. Although less cruel in her disposition than her father, she was not less imperious nor less jealous of opposition to her will. She, indeed, by the firmness of her character, and her constant attention to the interests of her kingdom and to the improvement of the social condition of her subjects, obtained great respect and submission from the people, with the popular name of "Good Queen Bess;" but she passed no laws giving them political rights; on the contrary, she restrained the privileges of parliament; and the rights of conscience were by her most signally disregarded. The legislation of her reign was chiefly directed to maintain without a rival the religion she had established; first, by the repression of the Roman Catholics,

¹ Burnet's History of the Reformation, book iii. "One that used to talk pleasantly, told her the four Evangelists still continued prisoners, and that the people longed much to see them at liberty. She answered, she would talk with themselves and know their own minds." (*Idem.*)

and next of the Puritans, as soon as they acquired strength in the nation.

In her reign we find three different classes of religionists :—

1. The supporters of the Church of England as altered and established by Elizabeth on the foundation of her predecessors ; the main principle being the acknowledgment of the sovereign as supreme head of the Church, and consequently the disavowal of any spiritual power in the pope.

2. Those who were desirous of carrying out the Reformation to the extent of overthrowing all spiritual and ecclesiastical authority, whether vested in the pope, in kings, or in a hierarchy of archbishops and bishops ; taking as their model the foreign Protestant churches, especially that of Geneva. This party obtained the name of "Puritans." They were averse from all forms and ceremonies which could not be supported by the express word of Scripture ; and this aversion was strong against the use of the symbol of the cross, of the surplice, of the ring in marriage, and against the ceremony of kneeling at the altar at the time of the sacrament, and even against the use of liturgical services.

3. The Roman Catholics, put down by law.

The first two statutes of Elizabeth's reign are those commonly known as the Acts of Supremacy and Uniformity. The former invests the sovereign with supreme authority over the Church, and in effect places the hierarchy in subordination to the monarchy ; the latter settled the liturgy, sacraments, rites, and ceremonies of the Church by the authority of parliament, and in effect rendered them unalterable, unless by the same authority.

The Act of Supremacy¹ repealed the statute of Philip and Mary, by which the jurisdiction of the see apostolic of Rome was restored,—and by such repeal the "good laws and

¹ 1 Elizabeth, cap. 1, "An act to restore to the crown the ancient jurisdiction over the estate ecclesiastical and spiritual, and abolishing all foreign powers repugnant to the same."

statutes, established by King Henry, for the extinguishment of all usurped foreign powers, and for the uniting to the imperial crown the ancient jurisdictions and pre-eminences" were restored. Its most important provisions are the following, which still exist as fundamental principles of the constitution:—

"No foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege spiritual, or ecclesiastical, within this realm, or the dominions thereof.¹

"Such jurisdictions, privileges, superiorities, pre-eminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, contempts, and enormities, shall for ever be united and annexed to the imperial crown of this realm."²

The sovereign was empowered to name and authorize commissioners, from time to time, to exercise and execute under him, all spiritual and ecclesiastical jurisdiction, within England and Ireland, or other dominions; and to visit, reform, redress, order, correct, and amend all errors, heresies, schisms, abuses, contempts, and enormities whatsoever. Under this law, Elizabeth constituted the High Commission Court; which remained a powerful instrument in the hands of the crown, until abolished by the Long Parliament, in the reign of Charles I., on the ground of "its great and insufferable wrong and oppression of the king's subjects."³

These laws or principles were embodied into an oath, known as the Oath of Supremacy and Allegiance, which remained unaltered till the Revolution. This oath was to be taken by ecclesiastical persons of every degree; by every temporal judge, justice, mayor, and lay or temporal officer or

¹ 1 Elizabeth, cap. 1, sect. 16. ² Sect. 17. ³ 16 Charles I., cap. 2.

minister, and by every other person having the queen's fee or wages. If refused, they forfeited their promotion, benefices, and offices. Any person affirming, maintaining, or defending any foreign authority, should, for the first offence, forfeit all his property, real and personal; and if it did not amount to £20, should suffer imprisonment for a year; for the second offence, should incur the penalties of *præmunire*; and for the third offence, be adjudged guilty of high treason, and suffer death accordingly.

The Act of Uniformity, by repealing a statute of Mary, restored the book of Common Prayer of Edward VI., with its order of services, and of the administration of sacraments, rites, and ceremonies, in full force and effect.¹ It was ordered to be used in every cathedral, parish church, or other place within the realm; and if any parson, vicar, or other minister refused, or should wilfully or obstinately use any other rite, ceremony, order, form, or other prayers than those mentioned in the book, he should, for the first offence, lose and forfeit all the profits of his spiritual benefices for one year, and suffer imprisonment for six months; for the second offence, the imprisonment was increased to a year; and for the third, for life. If there were no spiritual benefices, the first offence was imprisonment for a year; the second, for life.

The laity were included in these obligations by an enactment that in any interludes, plays, songs, rhymes, or by any open words, to declare or speak anything in derogation, depraving, or despising of the Common Prayer; to compel, or procure any parson, vicar, or other minister, in any cathedral, parish church, chapel, or other place, to sing or say common prayer otherwise than according to the book; for the first offence, the penalty should be 100 marks; for the second

¹ "But with one alteration, or addition, of certain lessons to be used on every Sunday in the year, and the form of the Litany altered and corrected, and two sentences only added in the delivery of the sacrament to the communicants." The act is entitled, "An Act for the Uniformity of Common Prayer in the Church, and Administration of the Sacraments." (1 Eliz. cap. 2.)

offence, 400 marks; and for the third offence, forfeiture of all goods and chattels, and imprisonment for life.

Attendance at church was also enforced. Every person within the realm, having no lawful or reasonable excuse to be absent, should diligently and faithfully endeavour themselves to resort to their parish church or chapel accustomed, or if prevented there, to some usual place of common prayer, upon every Sunday and holiday, and abide there during the service, upon pain of punishment of the censures of the Church, and of forfeiting twelve pence, for the use of the poor.

These were the principal acts of her first parliament, but there were, besides, two others,—one by which the queen's title to the throne was recognized by parliament, and the succession was settled according to the act of Henry;¹ the other restored to the queen and her successors the first-fruits and tenths of which it had been deprived by Mary.²

The clergy were soon tested by the oath of supremacy, and it must be remembered that they were, for the most part, the same persons as had adopted, or given their adherence to Catholicism, under the reign of Mary. All the bishops, except one, refused the oath. The general body of the clergy took the oath, with the exception of eighty rectors and vicars, fifty prebendaries, fifteen heads of colleges, twelve archdeacons, and as many deacons.³

The act of uniformity established the new religion, but it did not in express terms prohibit the old. It denounced punishment on ministers of the new establishment, who should use, and on persons who should compel them to use, in any of the national churches, any other services than those of the new book of Common Prayer; and it required all persons, without exception, to attend the established Church on Sundays and holidays. This marked an exclusive, if not a persecuting spirit; but provided there was conformity to that extent, to the established religion, worship

¹ 1 Elizabeth, cap. 3.

² 35 Henry VIII., cap. 1.

³ Hume's History, cap. 38, *apud* Camden, p. 376.

according to the doctrines or forms of the old religion was not expressly prohibited, nor made subject to any penalty. This omission was, however, afterwards abundantly supplied. A course of legislation was entered upon which extended through nearly the whole of Elizabeth's reign,—not indeed rising in severity, for that was scarcely possible,—although the first statute in the future series refers to the previous laws as mild and merciful.

The legislation was at first directed altogether against the Roman Catholics, in order to counteract their efforts, open or secret, through the medium of the pope or of the Jesuits and priests, to retain the old religion and the authority of the pope in the affections of the people. At a later period the legislation was directed against the Puritans as a sect. A distinction must, however, be made between the followers of the two denounced religions. However likely it may be that the Roman Catholics would have been satisfied with reasonable toleration, yet they acknowledged a foreign power, and professed doctrines and opinions hostile to the queen and to the established religion. The Puritans, on the other hand, not only approved, but when their influence became extended, strongly urged, legislation against the Catholics; nor did they dispute the temporal authority of the queen, nor wish to separate from, although they wished to reform, the national Church.

It is essential to the understanding of our constitutional progress, to have some acquaintance with this legislation, which expresses a policy that was continued by the nation for upwards of two hundred years, and which strongly affected the civil, as well as the religious freedom of the people. Its successive steps, and general scope, will be brought into view by the following table.

A.D.

1558 . .	The Act of Supremacy	1 Eliz., cap. 1.
”	” Uniformity	” cap. 2.
1562 . .	” { for assurance of the Queen's royal power over all estates and subjects }	5 Eliz., cap. 1.

A.D.			
1570 . .	The Act against Bulls from Rome . .	13 Eliz., cap. 1.	
"	" { for Ministers of the Church } " { to be of sound religion . . }	" cap. 12.	
1581 . .	„ against Mass	23 Eliz., cap. 1.	
1585 . .	„ { for the departure of Jesuits } " { and Priests }	27 Eliz., cap. 2.	
1593 . .	„ against Popish Recusants . .	35 Eliz., cap. 2.	
1593 . .	„ Sectaries (Puritans)	35 Eliz., cap. 1.	

The two first of these statutes have been already noticed. The object of the third was to extend the oath of supremacy over a larger number of the people.¹ It refers to the "perils, dishonours, and inconveniences that have resulted from the usurped power of the see of Rome, and also to the dangers from the fautors (favourers) of that usurped power, at that time grown to marvellous outrage and licentious boldness, and then requiring more sharp restraint and correction of laws, than thitherto, in the time of the queen's most mild and merciful reign, had been had, used, or established." It imposed the penalties of præmunire on those who maintained or defended the authority of the pope within the realm; and it required that the oath of supremacy and allegiance should be taken not only by ecclesiastics, and temporal office-bearers, receiving the queen's wages, but by all other persons, in holy orders, or admitted to any degree in the universities; by all schoolmasters, and public and private teachers of children; barristers and officers of the inns of court, attorneys and officers of the law. The bishops were empowered to tender the oath to ecclesiastics, and the lord chancellor to appoint commissioners to tender the oath to laymen. The penalty of refusal was, for the first offence, præmunire; and if, after three months, there was a second tender and refusal, the offence was high treason. Every knight, citizen, and burgess elected to parliament, was obliged, before he entered the parliament-house, or had any voice there, to take the oath before the lord-steward

Stat. 5 Elizabeth, cap. 1, "An Act for the Assurance of the Queen's royal power over all estates and subjects within her dominions." (1562.)

or his deputy, but no temporal peer should be compelled to take the oath. The act settled a doubt "whether, by the laws of this realm, there be any punishment for such as slay or kill a person attainted in or upon *præmunire*," by declaring that "it should not be lawful to kill or slay any such person."

An interval of eight years elapsed, and one parliament intervened without another statute against Rome; but in 1570 parliament met. Catholic intrigues had produced an insurrection in the north of England, with the purpose of displacing Elizabeth from the throne, and giving the kingdom to Mary, Queen of Scots. This plot was encouraged by Pope Pius V., and aided by his famous bull, excommunicating Elizabeth, and depriving her of her throne for heinous crimes against the Church. The bull was affixed to the gate of the archbishop's palace at Lambeth, by one Fenton, who was hanged for the offence. The parliament met on the 2nd of April, 1570, and immediately passed an act,¹ with express reference to the bull. "Seditious and evil-disposed people (the preamble states) have lately procured and obtained from the Bishop of Rome, and his see, bulls and writings, to absolve and reconcile all those that will be contented to forsake their due obedience to the queen, and to yield and subject themselves to the said feigned, unlawful, and usurped authority. And by colour of such bulls, wicked persons, in parts of the realm where the people, for want of good instruction, are weak, simple, and ignorant, have so far wrought, that sundry simple and ignorant persons have been reconciled to the usurped authority of Rome, and to take absolution, whereby have grown great disobedience and boldness, not only to withdraw from all divine service, but thinking themselves discharged from allegiance to the queen, wicked and unnatural rebellion hath ensued. Therefore, any person who should use any bull of absolution or reconciliation from the Bishop of Rome, or by colour of

¹ 13 Elizabeth, cap. 2, "An Act against the bringing in, and putting in execution of bulls, writings or instruments, and other superstitious things from the see of Rome."

any such bull, should take upon him to absolve or reconcile, or who should receive and take absolution or reconciliation, or should get from Rome any bull, and publish it, should be guilty of high treason, and suffer death." Aiders and comforters after the fact should incur *præmunire*. Any person to whom absolution should be offered, who should not disclose the offer within six weeks to some of the privy-council, should be guilty of misprision of high treason. *Præmunire* was imposed upon those who brought into the realm "things called *Agnus Dei*, or any pictures, crosses, beads, or such-like superstitious things, hallowed and consecrated, as it is termed, by the Bishop of Rome."

In the same session was passed an act which still regulates admission into holy orders.¹ The articles of the established Church were agreed upon by the archbishops, bishops, and clergy, in the convocation held in 1562, in the reign of Edward VI., and they were assented to and approved by Elizabeth, and confirmed by convocation in the year 1571. By this act it was and is now required that every priest or minister shall, in the presence of the bishop of his diocese, declare his assent, and subscribe to the articles of religion; and shall bring from the bishop, under his seal, a testimonial of such assent and subscription; and openly upon some Sunday, in the time of the public service afore noon, in every church where by reason of any ecclesiastical living he ought to attend, read both the testimonial and the articles; upon pain of being deprived. Any person ecclesiastical, who shall advisedly maintain or affirm any doctrine directly contrary or repugnant to any of the articles, and being convicted before the bishop, shall persist therein, and not revoke his error, or after revocation do affirm such untrue doctrine, the same shall be just cause to deprive such person of his ecclesiastical promotions; and it shall be lawful to the bishop to deprive him. No person shall be admitted to any benefice with cure, except he shall be of the age of twenty-three years at the least, and a deacon—and shall first

¹ 13 Elizabeth, cap. 12 (1571), "An Act for the Ministers of the Church to be of sound Religion."

have subscribed the articles in the presence of the ordinary, and publicly read them in the parish church of that benefice, with declaration of his unfeigned assent to the same. And none shall be made minister, or admitted to preach or administer the sacraments, being under the age of twenty-four years; nor unless he bring to the bishop, from men known to the bishop to be of sound religion, a testimonial both of his honest life, and of his professing the doctrine expressed in the articles; nor unless he be able to answer, and render to the ordinary an account of his faith, *in Latin*, according to the articles, or have special gift or ability to be a preacher; nor shall be admitted to the order of deacon or ministry, unless he shall first subscribe to the articles. None shall thereafter be admitted to a benefice, with cure, of or above the value of £30 yearly, in the queen's books, unless he shall then be a bachelor of divinity, or a preacher allowed by some bishop, or by one of the universities of Cambridge or Oxford.

Ten years elapse without another statute concerning religion. But in the parliament which met in 1581, the legislation against popery was resumed, in "an act to retain the queen's subjects in their due obedience."¹ This is the first statute expressly directed against the mass. It enacted that all persons who should have, or pretend to have power, or should by any ways or means put in practice to absolve, persuade, or withdraw any of her majesty's subjects from their natural obedience to her majesty, or to withdraw them from the established religion to the Romish religion; or to move them to promise obedience to the see of Rome; or should do any overt act to that purpose; should be adjudged traitors, and being lawfully convicted, should suffer and forfeit as in case of high treason. If any person be willingly absolved, or reconciled, or promise obedience to such pretended authority, he and his procurers and counsellors thereto, should suffer and forfeit in like manner. Every person who should say or sing mass should, on conviction,

¹ 23 Elizabeth, cap. 1, A.D. 1581-2.

forfeit 200 marks, and be imprisoned for a year, and thenceforth until the fine was paid. Any person who should hear mass, should forfeit 100 marks, and suffer imprisonment for a year. Persons above sixteen, not repairing to church, should forfeit £20 a month; and persons forbearing for twelve months, besides these forfeitures, should be bound for their obstinacy, with two sufficient sureties, in £200 at least, and continue bound until they conformed and went to church. But it was provided that those who usually on Sunday had in their houses the divine service established by law, and should not obstinately refuse to come to church, and should also four times a year, at least, be present at divine service in his parish church or some other church, should not incur the penalty.

A new parliament met in 1585, and began its labours by “an act against Jesuits, seminary priests, and other such-like disobedient persons.”¹ This statute was directed against the Jesuits or priests of the then new-founded order of Ignatius Loyola, and the priests of the new seminary or college of Douay, in Flanders, who were continually passing to and from the kingdom, inciting the papists to disloyalty and insurrection. “Divers Jesuits, seminary priests, and other priests (the preamble states) come into the realm, not only to withdraw the queen’s subjects from their obedience, but to stir up sedition, rebellion, and open hostility.” And it was enacted that Jesuits, seminary priests, and other priests should, within forty days after the end of the session of parliament, depart out of the realm. No priest born within the realm should come into, be, or remain in the realm, after the end of the forty days (except under the special circumstances mentioned in the act), and if he did, it should be adjudged high treason. Any one who should receive, relieve, comfort, aid, or maintain a priest, after the end of the forty days, should suffer death as a felon, without benefit of clergy. Any person (not being a Jesuit) then being of or brought up in any college of Jesuits, or seminary in foreign

¹ 27 Elizabeth, cap. 2, A.D. 1585.

parts, who should not, within six months after public proclamation, return into the realm, and within two days afterwards submit himself to her majesty and the laws, and take the oath of allegiance and supremacy, should, when he should otherwise return, for the offence of returning without submission, be adjudged a traitor, and suffer death as in case of high treason. Any person sending relief to a Jesuit or priest abroad incurred *præmunire*; and any one, after the forty days, knowing that a Jesuit or priest was within the realm, and not discovering it to a justice of the peace, within twelve days, should be fined and imprisoned at her majesty's pleasure. If the justice did not give information to the privy council within twenty-eight days, he should forfeit 200 marks. All persons were prohibited, during her majesty's life, from sending their children abroad, without the queen's license, on pain of forfeiting for every offence £100.

Eight years elapsed, and two sessions of parliament intervened, before the parliament met in 1593. In that parliament Elizabeth concluded this series of legislation against the pope, with an act¹ "for restraining popish recusants to some certain places of abode." It was directed against "sundry wicked and seditious persons, who, terming themselves Catholics, and being indeed spies and intelligencers, not only for her majesty's foreign enemies, but also for rebellious and traitorous subjects, and, hiding their most detestable and devilish purposes under a false pretext of religion and conscience, do secretly wander and shift from place to place within this realm, to corrupt and seduce her majesty's subjects, and to stir them to sedition and rebellion." It was enacted that all persons, above sixteen years, born within the realm, or made denizen, being popish recusants, and convicted for not repairing to church, and having a certain place of abode within the realm, should, within forty days after conviction, repair to their place of dwelling; and not at any time after, pass or remove above five miles from thence, upon pain of forfeiture of all their goods and chattels, and

¹ 35 Elizabeth, cap. 2, A.D. 1593-4.

all their lands and tenements, rents, and annuities, for the life of the offender. Popish recusants not repairing to church, and not having any certain dwelling and abode within the realm, should repair to the place where they were born, or where their father or mother should be dwelling, and not remove or pass above five miles from thence, upon pain of the like forfeiture. If a popish recusant (not being a married woman, and not having freehold lands of the yearly value of twenty marks, or goods and chattels above the value of £20) should not, within the forty days limited by the act, repair to his place of abode, or to that of his father or mother, or place of his birth, and notify his coming, with his name, to the minister or curate of the parish, and to the constable of the town,—or should pass or remove above five miles from the same, and should not, on being apprehended, conform to the laws by coming to church,—he should, upon his corporal oath, before two justices of the peace, abjure the realm of England for ever, and depart out of the realm, at such haven or port, and within such time, as should be assigned by the justices. Offenders might, before conviction, come to the parish church on Sunday or festival day, and at service-time, before the sermon, or reading of the gospel, make public and open submission, and declaration of conformity, and be discharged. Married women were bound by every article of the statute, other than the article of abjuration.

In the same parliament legislation was commenced against the puritans, and now we find, in the statute-book, the depreciatory terms, “sectaries,” “conventicles,” “meetings,” in later times so familiar. “An act to retain the queen’s majesty’s subjects in their due obedience” was passed.¹ It is declared to be for the preventing and avoiding of such great inconveniences and perils as might happen and grow by the wicked and dangerous practices of seditious sectaries and disloyal persons; and it enacted that persons, above the age of sixteen years, obstinately refusing to come to the church established by law, and persuading others to deny

¹ 35 Elizabeth, cap. 1, A.D. 1593.

or impugn her majesty's authority in cases ecclesiastical, or to abstain from coming to church, or who should willingly join in, or be present at, any unlawful assemblies, conventicles, or meetings, under colour or pretence of the exercise of religion—being thereof convicted—should be committed to prison, there to remain until they should conform and come to church, and make open submission and declaration of their conformity. Any person who should not, within three months after conviction, on being required so to do, conform himself, and make public confession, should abjure and depart from the realm; and if he returned, without license, he should be adjudged and suffer as a felon, without benefit of clergy.

If with impatience we pass through the formal and heavy language of these statutes, we should think of the terror which the same words imparted to great multitudes of people, who, for the most part, were only desirous of peacefully worshiping God according to the religion in which they had been brought up, or according to the light of their consciences. Historians compute that about two hundred Roman Catholics were put to death in Elizabeth's reign. But that severe punishment was but one branch of the misery which this legislation produced. We have no record of that which resulted from the heavy penalties of *præmunire*, and of banishment, fine, and imprisonment; and we can only imagine, by reference to our own feelings and the force of our own convictions, the unhappiness and remorse of those who only avoided martyrdom or punishment, by concealment of their inward and most cherished opinions on the most sacred and important of all subjects.

These statutes, whilst they established the supremacy of the crown as against all foreign potentates, and settled the national religion, did not alter the relations between the sovereign and the people, or the legislature, in temporal matters. We must now, therefore, consider how these relations stood at this period of our history. No sovereign, since *Magna Charta*, seems to have been so free and un-

restrained as Elizabeth in the exercise of the regal authority, nor to have carried the prerogative to so high a pitch. The administration of the law was, to a great extent, as well in civil as in religious matters, directed by her personal wishes. In the court of star-chamber, she, if present, was the sole judge. The members held their places at her will; and might fine, imprison, and punish corporally by whipping, branding, slitting nostrils and ears. The high commission court was instituted by Archbishop Whitgift, selected by the queen in 1583 for his zeal against the Puritans. By his advice she issued, under the authority of the act of supremacy, an ecclesiastical commission consisting of forty-four commissioners, of whom twelve were ecclesiastics, with authority for any three of them to inquire,—by the oaths of twelve men, and by witnesses, and all the means they could devise,—of all offences, contempts, and misdemeanours, done or attempted against the statutes of supremacy, uniformity, and other statutes; and of all heretical opinions, seditious books, contempts, conspiracies, slanderous words and sayings; to punish all persons absent from church, and all incests, adulteries, and offences of that kind; to examine all suspected persons on their oaths, and to punish all who refused to appear and obey their orders by spiritual censure, or by discretionary fine or imprisonment.

Under the powers of the commission, the archbishop instituted the *ex-officio oath*, to discover the concealed opinions of the puritanical clergy and others, by a series of interrogatories of the most searching and penetrating nature.¹

This court carried into effect the terrible penalties of the acts against the Catholics and Puritans; taking cognizance also of the crime of heresy, an offence within the range of their own definition. “No man,” wrote Elizabeth to Archbishop Whitgift, “should be suffered to decline, either to the right or left hand, from the drawn line limited by authority.”

¹ Hallam's Constitutional History, vol. i. pp. 196, 197.

Martial law superseded the ordinary courts and juries, when any insurrection or public disorder gave occasion for it; and then it was exercised not only over the soldiers, but also over the people. But it was not always confined to turbulent times, nor to seditious offences; it was sometimes used to despatch offenders against the spiritual laws. The rack,—that instrument of terror and pain,—although not acknowledged by the laws of England, was freely used in her reign; and not only by authority of the queen or of the courts, but by that also of her secretaries and privy-councillors, each of whom might, by his sole warrant, imprison any one whom he might suspect, for as a long a time as he thought proper; and, at his own discretion, order him to the rack. The trials by jury, in the courts of law, were conducted with great leaning towards the crown in political cases. Mr. Hallam, with eloquent indignation, declares, that “the glaring transgressions of natural as well as positive law, rendered our courts of justice, in cases of treason, little better than the caverns of murderers. Whoever was arraigned at their bar, was almost certain to meet a virulent persecutor, a judge hardly distinguishable from the prosecutor except by his ermine, and a passive, pusillanimous jury.”¹ The evidence was forced by the interrogation of the prisoner, or by written examinations or confessions of witnesses or accomplices, who were not confronted with the accused.

The laws were frequently superseded by royal proclamations constituting offences, not being such by law, and imposing penalties of fine and imprisonment on those who disobeyed them. The influence of the crown in parliament was absolute whenever it was exerted, and that it invariably was whenever the commons discussed matters displeasing to the queen. They were not allowed to legislate on the succession to the crown, or on religious or state affairs. Her lord keeper told the parliament of 1571, in the opening speech, that “they should do well to meddle with no

¹ Constitutional History, vol. i. p. 226.

matters of state but such as should be propounded unto them, and to occupy themselves with other matters concerning the commonwealth.”¹ In opening the parliament of 1592, the Speaker, having made the usual demand of liberty of speech, was told by the lord keeper, who received his instructions from the queen, that “privilege of speech was granted, but you must know what privilege ye have; not to speak every one what he listeth, or what cometh into his brain to utter;—your privilege is *Ay* or *No*.”² In the same parliament Mr. Peter Wentworth and Sir Henry Bromley, having delivered a petition to the lords to be suppliants with the lower house to the queen, for entailing the succession to the crown, for which they had a bill ready, were called before the council and committed to prison.³

In the same parliament the Speaker, by command of the queen, delivered to them, as he said, her majesty’s words,—“It was not meant we should meddle with matters of state, or in causes ecclesiastical. She wondered that any would be of so high commandment to attempt a thing contrary to that which she hath so expressly forbidden. Her majesty’s present charge and command is, that no bills touching matters of state, or reformation in causes ecclesiastical, be exhibited. And upon my allegiance I am commanded, if any such bill be exhibited, not to read it.”⁴

Members who, led away by their courage or their patriotism, infringed the royal commands, were summoned to the privy council, where they were so frightened by the punishments with which they were threatened, that when they returned to their seats, their terror was visible in their faces, and was communicated to all around. The more intrepid or refractory were sent to the Tower, from which they were only released by the humble petition of the commons to the queen.

Parliament gave Elizabeth the ancient tax of tonnage and poundage, and many subsidies were granted to her; but she

¹ Parliamentary History, vol. iv. p. 97.

³ *Idem*, 365.

² *Idem*, 349.

⁴ *Idem*, 396.

greatly augmented her revenue, and avoided frequent recourse to parliament, by the money she obtained for grants of monopolies for the exclusive sale of commodities,—some of them the common necessities of life. A list of those granted to her courtiers was read in the house of commons in 1601; an indignant member asked, “Is not bread amongst them?”¹ In that parliament, with fear and trembling at the danger of encountering the prerogative royal, a bill was brought into the house of commons, by Mr. Laurence Hide, “for the explanation of the common law in certain cases of letters-patent.”² Elizabeth, now in the last year of her life, commanded the Speaker to inform the house, that, “understanding that divers patents which she had granted had been grievous to her subjects, some should be presently repealed, some superseded, and none put in execution but such as should first have a trial, according to the law, for the good of the people.”³ The house waited on the queen with an address of thanks; she replied, “Never since I was a queen did I put my pen to any grant but upon pretext and semblance made to me, that it was both good and beneficial to the subjects in general, though a private profit to some of my ancient servants who had deserved well. . . . I have ever used to set the last judgment-day before my eyes, and so to rule as I shall be judged to answer before a higher judge; to whose judgment-seat I do appeal, that never thought was cherished in my heart that tended not to my people’s good.”⁴

Yet with all this power of oppression, the recital of which raises a feeling of commiseration for the unhappy people who came under its influence, Elizabeth was a popular monarch, admired and beloved by her subjects, who have transmitted their admiration to their posterity. No attempt, or even conspiracy, originating with the people, was ever made to take her life, or remove her from the throne; although she protected herself by no army, nor had she any guard but a small body of yeomen. On the contrary, when a con-

¹ Parl. Hist., vol. iv. p. 462.

² *Idem*, p. 452.

³ *Idem*, p. 469.

⁴ *Idem*, p. 480.

spiracy was discovered, in 1584,—imputed to the intrigues of Mary, Queen of Scots,—an association was formed by the Earl of Leicester and other courtiers; “and as,” observes Hume, “Elizabeth was beloved by the whole nation, except the more zealous Catholics, men of all ranks willingly flocked to the subscription of it.”¹ It must be supposed, therefore, that her power was exercised with great moderation towards the body of the people; and that any injurious effect it was calculated to produce on their loyalty, was counteracted by their admiration of Elizabeth, as a bold defender of the Protestant religion and of the national rights and interests, against enemies at home and abroad; and by the knowledge that all quailed under her authority, from the peer to the peasant.

In a constitutional history it would be unpardonable to overlook Peter Wentworth, member for Tregony in Cornwall, the leader of a small band of Puritan patriots, who upheld the principles of civil liberty, and the privileges of parliament, and dared to assert them in defiance of Elizabeth’s prerogative and power. We first find him in the parliament of 1575, in which he made a speech in behalf of the liberties and privileges of the commons,—overlaid, indeed, with much matter, but its diffuseness perhaps necessary to cover the patriotic sentiments by a profession of great veneration and respect for the queen, and of submission to her government. “Sweet,” he said, “is the name of liberty; but the thing itself a value beyond all inestimable treasure. So much the more it behoveth us to take care lest we, contenting ourselves with the sweetness of the name, lose and forgo the thing.” He reminds the house that they are assembled “to make or abrogate such laws as may be to the chiefest surety and enrichment of this noble realm. In the last and preceding session, I saw the liberty of free speech, so much and so many ways infringed, and so many abuses offered to this honourable council, as hath much grieved me; wherefore I do think it expedient to open

¹ Hume’s History, cap. 41.

the commodities that grow to the prince and state by free speech. Without this it is a scorn and mockery to call it a parliament-house; for in truth it is a school of flattery and dissimulation. Two things do great hurt here: one, a rumour which runneth about the house, 'Take heed what you do; the queen's majesty liketh not such a matter; whosoever preferreth it, she will be offended with him.' On the contrary, 'Her majesty liketh of such a matter; whosoever speaketh against it, she will be much offended with him.' The other is a message sometimes brought into the house, either of commanding or inhibiting, very injurious to the freedom of speech and consultation. I would to God, Mr. Speaker, that these two were buried in hell. The king hath no peer or equal in the kingdom; but he ought to be under God and the law, because the law maketh him a king. A message was brought last session into the house, that we should not deal in any matters of religion, but first to receive from the bishops. Surely this was a doleful message, for it was as much as to say, ye shall not deal in God's causes." He declared his design to be to seek "the advancement of God's glory, an honourable sovereign's safety, and the sure defence of this noble isle of England, by maintaining the liberties of this honourable council, the fountain from whence all these do spring." For this noble speech, Mr. Wentworth was committed to the Tower; from which he was liberated on the 12th of March, by a message from the queen.¹

We find him again in the parliament of 1588, proposing to the Speaker a series of questions, "how far he might proceed in that honourable council in matters that concern the glory of God, and our true and loyal service to our prince and state." These questions were pointed at the control exercised by the queen; and they inquire, "whether the house be not a place for any member freely and without controlment of any person, or danger of laws, by bill or speech, to utter any of the griefs of the commonwealth;—whether

¹ Parliamentary History, vol. iv. pp. 186–200.

honour may be done to God, and benefit and service to the prince and state, without free speech;—whether there be any councils besides parliament, which can make, add to, or diminish from the laws of the realm;—whether it be not against the orders of that house to make any secret or matter of weight, in hand, known to the prince;—whether the Speaker, or any other, may interrupt any member in his speech in this house;—whether the Speaker may rise when he will, without consent of the house;—whether the Speaker may overrule the house;—whether the prince and state can continue, stand, and be maintained without the parliament, but by altering the government of the state.” For these questions Mr. Wentworth was again committed to the Tower; but parliament being dissolved soon afterwards, he obtained his release.¹

In Wentworth and his little band of Puritans we have the originators of that party which, animated by religious zeal as well as civil freedom, never ceased to resist the prerogatives of the crown, until they were reduced within the limits of our existing constitution.

The reign of Elizabeth did not add to the statute-book any constitutional law, except the great law of her reign, the “Act for the Relief of the Poor.”² This conferred on the people the constitutional right of being fed and supported when reduced to extreme poverty. It divided the poor into two classes;—those not able to work, and those unable to procure work; and it directed the churchwardens and overseers of every parish—

To give relief to lame, impotent, old, and blind poor, not able to work;

To set to work persons having no means, and using no ordinary or daily trade of life, to get their living by.

Parliamentary History, vol. iv. pp. 316–319.

² 43 Eliz. cap. 2, “An Act for the Relief of the Poor,” 1601.

CHAPTER XIV.

JAMES I., FIRST OF THE STUART MONARCHS.

1603-1625. Reigned 22 years.

Accession of James I.—Meeting of Parliament.—Its Flattery of the King.—Battle commenced between Prerogative and Freedom.—Doctrine of Divine Right of Kings.—Parliament, 1603-4.—Legislation continued against Romanists.—Gunpowder Plot.—Acts against Popish Recusants.—Parliament, 1609.—Test applied to Aliens.—King's Proclamation about Elections.—Goodwin's Case.—Commons' Privilege from Arrest confirmed.—Vindication of their Privilege.—Member Expelled.—Session, 1610.—King's Speech.—Bates' Case.—Cowell's 'Interpreter.'—Commons Protest against Proclamations.—Proposals for Union of Scotland, and Abolition of Feudal Revenues.—James's Embarrassments.—Baronets created.—Lotteries established.—1614.—A Parliament.—Impositions, without Consent of Parliament.—Dissolved.—Government supported by Benevolences.—1621.—War in the Palatinate.—A Parliament called.—King's Speech.—Subsidy granted.—Lloyde's case.—Parliament adjourned.—Reassembled.—Lord Keeper's Speech.—Commons' Remonstrance.—King's Letter.—Second Remonstrance.—King's Answer.—Commons resolve to place their Privileges on Record.—Commons' Protestation.—Erased from the Journals by the King.—The Patriots punished.—New Parliament, 1623.—Commons give Subsidies to support the War.—Commissioners to Control the Expenditure.—Impeachment of a Minister.—Monopolies.—Statute abolishing them.

JAMES, the sixth of Scotland and the first of England, ascended the throne on the demise of Elizabeth, on the 24th of March, 1603,—founding his title on hereditary right, and without regard to the act of parliament which enabled Henry VIII., in default of issue of his children, to settle the crown on whom he pleased by his last will, and by vir-

tue of which he appointed the succession in favour of the descendants of his younger sister, the Duchess of Suffolk. He was son of the lady Margaret, eldest sister of Henry VIII., by her husband the King of Scotland; and on the failure of lineal heirs of Henry, his right accrued, as grandson of Henry VII., in the female line. He was received with great welcome by the people, who had become tired of their long submission to Elizabeth; and it is probable that the ardent patriots, who at the latter end of the reign of Elizabeth had sprung up in the nation, looked forward to the new reign and to the occupation of the throne by a foreigner, to establish the principles of liberty for which they vainly contended under the repressive system which Elizabeth maintained. But in the outset of this reign the most extreme flattery was addressed to the monarch. The assembling of parliament had been deferred on account of the plague, which raged during the year of James's accession, but it met on the 19th of March, 1603-4. James opened the parliament with a long speech.¹ Its first act was "a most joyful and just recognition of the immediate, lawful, and undoubted succession, descent, and right of the crown." Adverting to the blessings derived from the happy union and conjunction of the houses of York and Lancaster, the parliament acknowledged "the more inestimable and unspeakable blessings poured upon the nation and derived from that union, in the more famous and greater union of two

¹ Commons' Journals, vol. i. pp. 142-146. Of this speech Hume observes, that "few productions of the age surpass this performance, either in style or matter; although it wants that majestic brevity and reserve which becomes a king in his addresses to the great council of the nation." (Hume's History, ch. 45.) Locke quotes this speech in his work "On Government," for a description of tyranny, which he defines to be the exercise of power beyond right; remarking that if any one doubt the truth or reason of what comes from the obscure hand of a subject, he hopes the authority of a king will make it pass. "I will ever prefer the weal of the public, and of the whole commonwealth, in making of good laws and constitutions, to any particular and private ends of mine; thinking ever the wealth and weal of the commonwealth to be my

mighty, famous, and ancient kingdoms (yet anciently but one) of England and Scotland, under one imperial crown. It acknowledged the king's title "with one full voice of tongue and heart," giving "unfeigned and hearty thanks to Almighty God for blessing them with a sovereign adorned with the rarest gifts of mind and body;" and "upon the knees of their hearts they agnized their most constant faith, obedience, and loyalty to his majesty and his royal progeny, of most rare and excellent gifts and forwardness."

This panegyric was addressed to a king of very ordinary personal appearance, and of pusillanimous and pedantic mind; but who did not scruple to assume and act upon the exalted notions of power and prerogative which the parliament ascribed to him as "the most potent and mighty king;" to whom, "we most humbly and faithfully do submit and oblige ourselves and our heirs and posterities for ever, until the last drop of our lives be spent."¹

The royal progeny "from whose most excellent gifts and forwardness" so much future advantage to the nation was anticipated, did indeed furnish to it a king, by whom and his descendants, educated in these high notions of power and prerogative, the nation was led through a long contest and course of discipline which ended in the establishment of constitutional government. It was with the Stuart kings that the battle between prerogative and freedom was fought. The absolutism that existed in the constitution, girded itself with all its strength in these reigns, fought for its existence,

greatest weal and worldly felicity,—a point wherein a lawful king doth directly differ from a tyrant. For I do acknowledge that the special and greatest point of difference that is between a rightful king and a usurping tyrant, is this;—that whereas the proud and ambitious tyrant doth think his kingdom and people are only ordained for satisfaction of his desires and unreasonable appetites; the righteous and just king doth by the contrary acknowledge himself to be ordained for the procuring of the wealth and property of his people." (Book ii. cap. 18.) It is curious to find such constitutional principles laid down at the commencement of the career of the Stuart kings.

¹ 2 James I., cap. 1, 1604.

and was defeated, to rise no more. But to understand the principles decided in that contest, and the grounds on which the Stuart kings founded their high pretensions, it is necessary to notice a doctrine which then had great influence in the nation, especially over the clergy, and the higher classes of the laity,—the doctrine of the divine and indefeasible right of kings, and the passive obedience of the people.

This famous doctrine was current in the reign of James, who had employed his pen to enforce it;¹ but we may collect a more concise account of the doctrine and of the arguments by which it was maintained, from a later and more celebrated work, called the 'Patriarca,' written by Sir Robert Filmer, in the reign of Charles I., and published after the restoration of Charles II. "All government (it is asserted) is absolute monarchy. No man is born free; and, therefore, could never have the liberty to choose either governor or form of government. The father of a family governs by no laws but his own. Kings, in the right of parents, succeed to the exercise of supreme jurisdiction. They are above all laws. They have a divine right to absolute power; and are not answerable to human authority." The consequence of these propositions was assumed to be, "that all laws, privileges, and grants of princes, have no force but during their lives, if they be not ratified by the express consent, or by the sufferance of the prince following. A perfect kingdom is that where the king rules all things according to his own will."² This doctrine was preached by the Church, and acted upon by the Stuart kings.

The legislation of this reign, concerning the people, is almost entirely connected with the enforcement of the established religion on papists. James continued the severe policy of Elizabeth towards the papists; and he was strongly urged by repeated demands of the house of commons to put the acts in vigorous force against them. One of the earliest acts of his first parliament was to enforce "the due execu

¹ In a work called 'The true Laws of free Monarchies.'

² See Locke, On Government.

tion of the statutes of Elizabeth against Jesuits, seminary priests, recusants, etc.”¹

The second session of parliament commenced on the 5th of November, 1605, the day after the discovery of the gunpowder plot; and the act which was immediately passed for establishing an annual public thanksgiving was the occasion of more of that fulsome, and even blasphemous adulation which was habitually addressed to this king.² “No nation of the earth hath been blessed with greater benefits than this kingdom now enjoyeth, having the true and free profession of the Gospel, under our most gracious sovereign lord King James, the most great, learned, and religious king that ever reigned therein, enriched with a most hopeful and plentiful progeny, proceeding out of his royal loins, and promising continuance of this happiness and profession to all posterity. The which, many malignant and devilish papists, jesuits, and seminary priests, much envying and fearing, conspired most horribly, when the king, the queen, the prince, and lords and commons should have been assembled in the upper house, on the 5th of November, 1605, suddenly to have blown

¹ 2 James I., cap. 4.

² Even Lord Bacon used this sort of flattery to James; and vain indeed was his prognostication, as well as that just quoted from the statute, of the stability of the Stuart dynasty. After characterizing the sovereigns from the union of the Roses to Elizabeth, Lord Bacon proceeds:—“And now, last, this most happy and glorious event, that this island of Britain, divided from the world, should be united in itself, and that old oracle given to Æneas (‘*Antiquam exquirite matrem*’*), which foreshowed the rest in store for him, should now be performed and fulfilled upon the most ancient nations of England and Scotland; being now reunited in the ancient mother-name of Britain, as a pledge and token of the end and period of all instability and peregrinations; so that, as it comes to pass in massive bodies, that they have certain trepidations and waverings before they fix and settle; so it seems to have been ordained by the providence of God, that this monarchy, before it settled and was confirmed in your majesty and your royal generations (in which I hope it is now established for ever), should undergo these prelusive changes and varieties.” (Translation of the *De Augmentis*, book 2, vol. iv. pp. 306, 307, Ellis and Spedding’s edition.)

* “Seek out your ancient mother.” (Virg. *Æn.* iii. 96.)

up the whole house with gunpowder. The inhuman invention was (as some of them confessed) concluded to be done in the house, where necessary and religious laws for the preservation of the Church were made,—which they falsely and slanderously called cruel laws, enacted against them and their religion,—and which would have turned to the utter ruin of this whole kingdom, if it had not pleased Almighty God, by inspiring the king's most excellent majesty with a divine spirit, to interpret some dark phrases of a letter showed to his majesty, above and beyond all ordinary construction; thereby miraculously discovering the hidden treason not many hours before the appointed time for the execution thereof.”¹

In a parliament so inflamed, and after an attempt so atrocious, it does not surprise that the severity of the laws was increased. An act immediately followed “for the better discovering and repressing of Popish recusants.” Those who had been convicted, and had conformed and repaired to church, were, once in every year, to receive the sacrament in the church of the parish where they resided; under penalties for refusal of £20 for the first year, £40 for the second, and for every year afterwards £60. The churchwardens and constables were required to present the monthly absence from church of all popish recusants within their districts, and the names of their children and servants, to the court of quarter sessions; being encouraged so to do by a reward of forty shillings on the conviction of each recusant, levied out of his goods and chattels. A bishop, or two justices might require any person of eighteen years and above, convicted or indicted for recusancy (other than noblemen or noblewomen) to take an oath of obedience, in which is the well-known clause, “I do from my heart abhor, detest, and abjure, as impious and heretical, this damnable doctrine and position that princes excommunicated or deprived by the pope, may be deposed or murdered by their subjects, or any other whatever.”²

¹ 3 James I., cap. 1.

² 3 James I., cap. 4.

Another act was passed "to prevent and avoid dangers which grow by popish recusants." It also arose out of the gunpowder plot, and offered additional encouragement to informers to betray popish recusants. "Any one who should discover to a justice of the peace, a recusant or other person who should have entertained or relieved a jesuit, seminary, or popish priest;—or that mass had been said, the persons present at the mass, and the priest that said it,—within three days after the offence committed, and after conviction,—should not only himself, if an offender, be freed from the penalty of his own offence, but should have the third part of the money and property forfeited by the others, such third part not being more than £50. Popish recusants, convicted, were prohibited from coming to the court of the king or prince, under a penalty of £100." Those indicted or convicted, who should not have repaired to church for three months, were prohibited from coming to London, or within ten miles of it, and put under most stringent enactments as to residence elsewhere. No recusant convict could practise the law, or physic—or be a judge, minister, or officer in any court,—nor be a captain, lieutenant, corporal, sergeant, ancient-bearer, or other officer in the army; nor be captain, master, governor, or bear any office or charge in any ship, castle, or fortress of the king. And neither they, nor any one having a wife who was a popish recusant convict, should exercise any public office, or charge, by himself or his deputy; unless the husband and his children above nine years of age, and his household servants should, once every month, repair to church, and hear the service, and take the sacrament, and should also bring up his children in true religion. A married woman convicted as a popish recusant (her husband not being such) who should not within a year after the death of her husband, conform, and remain conformed,—and show her conformity by repairing to church, and there hearing divine service and sermon, and receiving the sacrament, within the year,—should forfeit to the king, two parts of her annual jointure, and two parts of her dower, during her life,

and be disabled to be executrix or administratrix of her husband, or to have any portion of his goods and chattels. Recusants were disabled from presenting to any benefice, or to be executor or administrator; and all their armour, gunpowder, and munition, were directed to be taken from them, except such necessary weapons as four justices should allow for the defence of their houses.¹

The parliament held in 1609 continued the same course severity against papists. It passed an act that no person should be naturalized, or restored in blood (in other words, relieved from the penalties of attainder), unless he received the sacrament before the bill was exhibited, and took the oath of allegiance and supremacy before it was read a second time.²

Another act of the same session shows the willing concurrence of the parliament in these severe laws. It was "for administering the oath of allegiance, and reformation of married women recusants." "To show how greatly your loyal subjects approve the oath, they prostrate themselves at your majesty's feet, that the oath may be administered to all your subjects." It required the oath to be taken by all persons, ecclesiastical and temporal, of both sexes, above the age of eighteen years. Numerous clauses describe the officials before whom the several orders and ranks in the state, —the church, the law, the army and navy, and the universities, members of parliament, doctors of physic, aldermen and freemen,—should take the oath, which was to be taken by all within six months. Any of the privy council, or a bishop, might require any baron or baroness above the age of eighteen—and two justices of the peace might require any other person above the same age—to take the oath. If refused, the person tendering the oath, should commit the offender to the common gaol, there to remain without bail, until the next assizes, or quarter sessions; where, if the oath were again refused, the person refusing incurred the penalties of *præmunire*; except married women, who were

¹ 3 James I., cap. 5.

² 7 James I., cap. 2.

to be imprisoned, without bail, until they would take the oath. Persons refusing the oath were disabled to execute any public place of judicature, or bear any office (being no office of inheritance or ministerial function) or to practise the common law, or civil law, or physic, or surgery, or the art of an apothecary, or any liberal science for gain, until they should receive the oath. Married women,—convicted as popish recusants for not coming to church,—who should not within three months after conviction, conform and repair to church, and receive the sacrament, should be committed to prison, there to remain without bail, until they conformed; unless the husband should pay to the king, for the wife's offence, for every month £10,—or else the third part of all his lands and tenements, at the choice of the husband,—so long as his wife, remaining a recusant convict, should continue out of prison.¹

The house of commons, relieved from the dread with which Elizabeth inspired them, soon gave James to understand that he must not expect submission to his absolute will, where their privileges were concerned; and they brought forward their claims, and enforced them with an energy and spirit, in striking contrast with the humble language of their statutes. In the first parliament they entered into a contest in which the king took a personal part, as to their right to decide upon election returns. James convoked the parliament by a royal proclamation, in which he admonished the electors that “the knights for the counties should be selected out of the principal knights or gentlemen of sufficient ability; and for burgesses, that choice be made of men of sufficiency and discretion.” He commanded that express care be taken that there be not chosen any banqueruptes or outlawed, but such only as were taxed to the subsidies, and had ordinarily paid and satisfied them; that sheriffs do not direct any precept to ruined and decayed boroughs; and that the inhabitants of cities and boroughs do not seal any blanks, leaving to others to insert the names;

¹ 7 James I., cap. 6.

but do make open and free election according to law. He notified that all returns should be brought into chancery, there to be filed of record; and if any be found contrary to the proclamation, they were to be rejected as unlawful and insufficient, and the city or borough was to be fined for the same; and if it be found that they had committed any gross or wilful default or contempt in their election, return, or certificate, that then their liberties were to be seized into his hands, and forfeited. If any person take upon him the place of a knight, citizen, and burgess, not being duly elected, returned, and sworn, then every person so offending to be fined and imprisoned for the same.¹

The commons lost no time, after the meeting of parliament, in questioning the right assumed by the king, in his proclamation, to have the returns of members decided in chancery.

Sir Francis Goodwin had been elected for Bucks; but his return was refused by the clerk of the crown, because he was outlawed,—*quia utlagatus*. On a second election, Sir J. Fortescue was elected. A motion was made in the house that the return be examined, and Goodwin be received as member. The clerk of the crown attended at the bar, by order of the house, with the return, and the house resolved, after debate, that Goodwin was lawfully elected and returned; the clerk of the crown was ordered to file the first return, and Goodwin took the oath of supremacy, and his seat. The lords desired a conference, which the commons declined, and sent a message, that in no sort they should give account to the lords of their proceedings. The lords replied, that, acquainting his majesty with the return, his highness conceived himself engaged and touched in honour, that there might be some conference of it between the two houses. Upon this message, “so extraordinary and unexpected,” the house appointed a committee to consider what should be delivered to his majesty; and through the Speaker, the house represented to the king that the sheriff

¹ Parliamentary History, vol. v. p. 4.

was no judge of the outlawry, neither could take notice it was the same man, and therefore could not properly return him outlawed. The king reminded the commons that he had no purpose to impeach their privilege; but since they derived all matters of privilege from him and his grant, he expected they should not be turned against him. The difficulty was, after considerable discussion, solved in a conference held in the king's presence, and by his command, with the judges; who—conceding that the commons was a court of record, and judge of returns, although not exclusively of the chancery—suggested that both Goodwin and Fortescue should be set aside, and a new writ be issued. This compromise was joyfully accepted by the commons; and it proved a victory, for no attempt was ever afterwards made to dispute their exclusive jurisdiction over the returns of their members.¹

In the same parliament the commons established their privilege to deliver out of custody members arrested in execution for debt, and to punish those who make or procure such arrest. Sir Thomas Shirley, a member, had been arrested for debt, and lodged in the Fleet Prison. The warden refusing to deliver up his prisoner, was sent for to the house; and, in the belief that he would be responsible for the debt if he consented to his discharge, he persisted in refusal, and was committed to the Tower for contempt. A motion was then made and carried, to send six members to the prison to “free the member by force, and bring him away to the house;” but the Speaker put the house in mind, that all who entered the prison would be subject to an action upon the case; and that proceeding was stopped. The house, to increase the punishment of the warden, transferred him to the prison of Little Ease, in the Tower. He then yielded, and offered, through the lieutenant of the Tower, that if the house would send him two members, whom he named, to be security for the debt, he would deliver up his prisoner. The house refused, but the member

¹ Parliamentary History, vol. v. pp. 58–87.

was released, although by what method does not appear, except by a memorandum in the journals :—"That Mr. Vice-Chamberlain was privately instructed to go to the king, and humbly desire that he would be pleased to command the warden, on his allegiance, to deliver up Sir Thomas, not as petitioned for by the house, but as, if himself thought fit, out of his own gracious judgment." The sequel is curious : the warden petitioned to be released, after Sir Thomas's liberation ; but the house thought fit to continue him in the same dismal hole some time longer ;—when at last, being ordered to be brought to the bar, on his knees, he confessed his error and presumption, and professed that he was unfeignedly sorry that he so offended the honourable house ; upon which he was discharged, paying the ordinary fees.¹

The privilege was put into an indisputable position by an act of the same parliament, which stating, "that doubt had been made, if any person being arrested in execution, and by privilege of either of the houses of parliament set at liberty," could be arrested again,—declared that "after such time as the privilege of that session of parliament in which such privilege shall be granted, shall cease," the plaintiff in the action may sue out a new writ of execution ; and that the sheriff, bailiff, or other officer, from whose custody any person so arrested should be delivered by any such privilege, should not be chargeable by action "for delivering out of execution any such privileged person, by such privilege set at liberty." It was also provided that the act should not extend to the diminishing of any punishment to be thereafter, by censure in parliament, inflicted upon any person who should make or procure any such arrest.²

Besides these successful struggles, the house of commons of James's first parliament laid the foundation of future success, by a bold and explicit statement of their constitutional rights and liberties, which they caused to be drawn up by a committee of the house, in order to be delivered to the

¹ Commons' Journals, vol. i. pp. 200-213 ; Parl. Hist., vol. v. p. 115.

² 2 James I., cap. 13, A.D. 1604.

king. It is entitled, "A Form of Apology and Satisfaction to be delivered to His Majesty;" and must ever be considered as an important constitutional document.¹ It is addressed to the king, and it commences by expressing a desire to remove from the mind of the king, (whom they style "a king of such understanding and wisdom as is rare to find in any prince in the world,") misinformation touching the estate of the house of commons, as to the privileges of the commons, and their several proceedings during this parliament. They reduce these misinformations to three principal heads. "1st, Touching the cause of the joyful receiving of your majesty into the kingdom;—2ndly, Concerning the rights and liberties of your subjects of England, and the privileges of this house;—3rdly, Touching the several actions and speeches passed in the house."

They "declare, as to the first, that they received him not with fear, but with joy and cheerfulness, and with a general hope that, under his reign, peace, justice, and all virtue, should renew again and flourish. Touching the privileges (the second), the misinformation delivered, was,—1st, That we hold not privileges of right, but of grace only, renewed every parliament, by way of donation, upon petition, and so to be limited;—2ndly, That we are no court of record, nor yet a court that can command view of records, but that our proceedings here are only to acts and memorials; and that the attendance with the records is courtesy, not duty;—3rdly, and lastly, That the examination of the return of writs for

¹ Commons' Journals, vol. i. p. 243, in part,—*in extenso* in Cobbett's Parliamentary History, vol. i. p. 1030. Mr. Hallam remarks that Hume has been ignorant of it. (Constitutional History, vol. i. p. 302.) But he appears to have overlooked a note in the appendix to Hume's History, where it is slightly commented upon. Hume says that it was the production of Sir Francis Bacon and Sir Edward Sandys, two men of the greatest parts and knowledge in England. (Hume's History, note C. to reign of James.) The Parliamentary History says that it was penned and argued in a select committee, and presented to the house by Sir Thomas Ridgway, one of the committee. It is not certain that it was ever delivered to the king.

knights and burgesses is without our compass, and due to the chancery.

“ They, in the name of the whole commons of England, and for themselves and their posterity, protest against these assertions, and desire that their protestation may be recorded to all posterity. And contrariwise, against these misinformations, they most truly avouch,—1st, That our privileges are our right and due inheritance, no less than our lands and goods;—2ndly, That they cannot be withheld from us, denied, or impaired, but with apparent wrong to the whole state of the realm;—3rdly, That our making of request, in the entrance of parliament, to enjoy our privilege, is an act only of manners, and doth weaken our right no more than our suing to the king for our lands by petition, which form, though new and more decent than the old by *præcipe*, yet the subject’s right is no less now than of old;—4thly, We avouch also, that our house is a court of record, and so ever esteemed;—5thly, That there is not the highest standing court in the land that ought to enter into competency, either for dignity or authority, with this high court of parliament, which, with your majesty’s royal assent, gives laws to other courts, but, from other courts, receives neither laws nor orders;—6th, and lastly, We avouch that the house of commons is the sole proper judge of return of all such writs, and of the election of all such members as belong to it—without which the freedom of election were not entire; and that the chancery, though a standing court under your majesty, be to send out these writs and receive the returns, and to preserve them, yet the same is done only for the use of parliament; over which, neither the chancery, nor any other court ever had, or ought to have, any manner of jurisdiction.”

The strain of such high principles, in a body which had addressed so much fulsome flattery to James, in the first acts of the parliament, may be conceived, and in the session of 1606 the commons receded so far as to expel a member at the king’s dictation. Sir Christopher Pigott introduced into a

speech some bye-matters of invectives against the Scotch and the Scottish nation: the house was so amazed at the speech that they took no notice of it at the time, nor until three days afterwards, when they received a message from the king, "how much he did mislike and tax the neglect of the house, in that speech was not interrupted in the instant, and the party committed before it became public, and to his highness's ear." The house sent the sergeant-at-arms for the offender; "but after all, they knew not what way to censure him for it; freedom of speech, in their house, was a darling privilege." But it was resolved to expel him, and on his knees he received from the speaker the judgment of the house, committing him to the Tower during the pleasure of the house, and dismissing him from his place as knight of the shire.¹

The boldness of the commons required from the king a counter-assertion of his authority and principles of government, and, in a speech with which he opened the session of parliament of 1610, he declared these in the highest strains of divine right. The contest, now commenced between prerogative and parliament, was, in this reign, carried on by speeches, or state papers,—the protocols, as it were, which preceded the declaration of actual war,—and it is in these we must look for the pretensions and demands of the contending parties. From the long and pedantic speech of James, a few extracts will show his view of his royal prerogative and position. "The state of monarchy is the supremest thing upon earth; for kings are not only God's lieutenants upon earth, and sit upon God's throne, but, even by God himself, they are called Gods. . . . Kings have like power with God: they make and unmake their subjects; they have power of raising and casting down; of life and death; judges over all their subjects, and in all causes, and yet accountable to God alone." He admits that "a king is bound to protect his people, and to govern them according to his laws; and therefore a king, governing in a settled kingdom, leaves to be a king, and

¹ Comm. Journ. vol. i. p. 335; Parl. Hist., vol. v. p. 180.

degenerates into a tyrant, as soon as he leaves off to rule according to his laws ; . . . and they that persuade them to the contrary are vipers and pests, both against them and the commonwealth : yet their punishment is with God, and no Christian man ought to allow any rebellion of people against the prince." He concludes with this climax of divine right :—"That as to dispute what God may do is blasphemy, so is it sedition in subjects to dispute what a king might do in the height of his power ; but just kings will ever be willing to declare what they will do, if they will not incur the curse of God. I will not be content that my power be disputed upon ; but I shall be ever willing to make the reason appear of all my doings, and rule my actions according to my laws."¹

These high pretensions did not intimidate the commons, who, in this session, called in question a proceeding of the king's in relation to the custom of tonnage and poundage. An act of his first parliament² granted to James the subsidy of tonnage and poundage for his life ; but afterwards, by his own sole authority, he increased the duty on currants from two shillings and sixpence to five shillings per hundred-weight. This being an imposition without the consent of parliament, Bates, a Turkey merchant, refused payment, and he was prosecuted by the crown. The Court of Exchequer, subservient to the crown, had justified the imposition on the principle of the divine right of kings, and their superiority to all laws which they had not concurred in enacting. In the session of 1610 the commons, although forbidden by the king, remonstrated against the imposition, and excused themselves from compliance with his command not to enter upon the matter, by declaring that they claimed it "as an ancient, general, and undoubted right of parliament to debate freely all matters which do properly concern the subject, which freedom of debate being once foreclosed,

¹ Parl. Hist., App., vol. xxiii. p. 3 ; taken from the folio printed volume of King James's works.

² 1 James I., cap. 33.

the essence of the liberty of parliament is withal dissolved." And as to the imposition and judgment in the Exchequer, after premising "that the policy and constitution of the kingdom appropriates unto the kings, with the assent of parliament, as well the sovereign power of making laws, as that of taxing, or of imposing upon the subjects' goods or merchandises, as may not, without their consents, be altered or changed;" they say that "finding that your majesty,—without advice or consent of parliament, hath lately, in time of peace, set both greater impositions, and far more in number, than any your noble ancestors did ever in time of war,—have, with all humility, presumed to present this most just and necessary petition to your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away; and that your majesty, in imitation likewise of your noble progenitors, will be pleased that a law be made, during this session of parliament, to declare that all impositions set, or to be set upon your people, their goods and merchandises, save only by common consent in parliament, are and shall be void."¹ The commons followed up their protest with a bill abolishing impositions; but it was thrown out of the upper house.

The king's high notions of prerogative found a supporter in Dr. Cowell, a clergyman, who published a book called 'The Interpreter,' dedicated to Archbishop Bancroft. It was rumoured that the king had spoken favourably of the book, and the indignation of the commons was roused. It must be admitted that the royal prerogative was asserted in an extravagant form. The author's principles were these:—1st. That the king was *solutus à legibus*, and not bound by his coronation oath. 2. That it was not *ex necessitate* that the king should call a parliament to make laws, but might do it by his absolute power; for *voluntas regis* was *lex populi*. 3. That it was a favour to admit the consent of his subjects in giving of subsidies. The commons sent a

¹ Comm. Jour. vol. i. p. 431; Somers's Traacts, vol. ii. p. 159; Hallam's Const. Hist. vol. i. p. 314.

message to the lords that they had noticed Cowell's book, which, as they conceived, contained matters of scandal and offence towards the high court of parliament, and was otherwise of dangerous consequence and example. Conferences were held between the lords and commons, and the king called the author before him and heard his defence of his doctrines. He afterwards transmitted his judgment to the lords to be communicated to the commons; but it never was communicated, and the matter dropped, the commons probably thinking that their remonstrance was sufficient.¹

The commons, in the same parliament, when asked for a subsidy, gave priority to their grievances in ecclesiastical and temporal concerns. They complained of the high commission court, and of its proceeding to fine and imprisonment—powers beyond its jurisdiction. They disputed the king's power to make or alter laws by proclamations; they said "that there was nothing more precious than to be governed by the certain rule of the law, . . . and not by any uncertain or arbitrary form of government. . . ." They asserted "the indubitable right of the people of this kingdom not to be made subject to any punishment that should extend to their lives, lands, bodies, or goods, other than such as were ordained by the common laws of this land, or the statutes made by their common consent in parliament; and they pointed out that proclamations had of late years been more frequent, extending not only to the liberty and property of men, but altering the old laws and making new,—even when the latter had been rejected in the same session of parliament,—and imposing penalties and punishments; so that a general fear was conceived and spread amongst the people, that proclamations would, by degrees, grow up and increase to the strength and nature of laws."²

¹ Parliamentary History, vol. v. p. 224. Another author complained of by the commons contended "that we are all *slaves*, by reason of the Conquest." (*Idem.*)

² Somers's Tracts, vol. ii. p. 162. Hallam's Constitutional History, vol. i. p. 321.

Two great measures (which, however, were not carried out by legislation in this reign) occupied much of the attention of the king and parliament. The first was the union of England and Scotland, as one nation, under the same parliament and government, which the king was extremely anxious to bring about, but in which he was not cordially met by the parliament. James urged the union in the speech with which he opened parliament in 1607.¹ He admitted that England should receive Scotland in a union, as if by conquest, but as conquest cemented by love. He expressed his desire that as there was *unus rex*, so there may be *unus grex et una lex*; but reserving to Scotland her particular privileges. The other measure was the abolition of the feudal revenues of the crown,—which the commons desired, and for which they were willing that the king should receive an adequate compensation. This affair acquired the name of the *great contract* between the king and people. James sent a message to the lords naming the price for the commutation, and offering to accept £200,000 yearly. The commons struggled for £180,000, but ultimately came up to the price demanded. The lords strove to carry through the contract on the part of the king; and even put up with some disrespect from the commons in matters of form, rather than interrupt the progress of the treaty. But the commons suddenly changed their minds, from a feeling, it is supposed, that they could have no security for the permanence of the arrangement, from the laxity of the doctrines of divine right. The king was displeased, and dissolved the parliament, and king and parliament parted in no good humour towards each other.²

The failure of the contract, and the dissolution of parliament without the grant of a supply, left James in great embarrassment. He was not involved in war, but the supply of his court and of his favourites, required large sums of money. Its effect on the people is described as beneficial. “Freedom from war made riches flow; no taxes anyways

¹ Parl. Hist. vol. v. pp. 181–207.

² *Idem*, pp. 243–263, *passim*.

burdensome—the grant of subsidies during this king's life being but a poor pittance compared with those of Elizabeth. How he kept up his estate and expense of court is a secret.”¹ Robert Carr, his favourite, whom he had created Viscount Rochester, suggested a new order of dignity, that of *baronets*, who paid for their patents £1000 apiece. It being pretended that the money was raised to plant colonies in Ireland, “the bloody hand,” the arms of the province of Ulster, was added as a trophy to the baronets' escutcheons.² The current value of the gold coin was raised; and a lottery, the first that was drawn in England, was instituted.³

These resources being insufficient, and the king's necessities being great, he was induced to try the effect of a parliament. This was strongly urged by Sir Francis Bacon, and seconded by others of the king's ministers and courtiers, who professed to be able to assemble such a house of commons, and to manage it when assembled, in such manner as to be subservient to the king's wishes. These therefore got the name of *Undertakers*.⁴

The parliament met on the 5th of April, 1614, but the scheme was eminently unsuccessful. The commons passed a unanimous vote against the king's right of imposing taxes without consent of parliament; and they desired a conference with the lords touching the point of impositions. The lords desired the opinions of the judges on the subject, in order to regulate their answer to the commons; but the judges, headed by Sir Edward (Lord) Coke, declined to give an opinion, on the ground that the question might come before them judicially; and the lords, unable to settle a satisfactory answer, sent a message to the commons declining the conference. The commons resented the refusal, and returned a message to the lords, charging that they had been

¹ Parliamentary History, vol. v. p. 270.

² *Idem*, p. 271.

³ Stated by Mr. Hallam on the authority of a MS. in his possession.

⁴ He points this out “as the rise of a systematic parliamentary influence which was one day to become the mainspring of government.” (Constitutional History, vol. i. p. 333.)

dissuaded by the Bishop of Lincoln, who had made a speech, in which he used words (quoted in the message) to the effect that the matter concerning which a conference was required, was, as affecting the king's prerogative, *noli me tangere*; and that such conference would produce undutiful and seditious speeches unfit for their lordships to hear. The commons added that they considered so great a wrong had been done to them, which they had so taken to heart, that they had determined to forbear all parliamentary matter until they might receive answer from the lords. This threat was directed against a bill of supply which the king's secretary had introduced into the lower house.

The lords sent a message excusing the bishop, and representing that his words had been mistaken—that the bishop had no intention of giving the commons offence; and that their lordships were of opinion that, thereafter, no member of their house ought to be called in question, when there was no other ground for it but public and common fame. The commons persisting in their resolution, the Speaker delivered a message to them, which he had received from the king, that unless they forthwith proceeded to treat of his supply, he would dissolve the parliament. The lords, to whom the king had sent a commission to dissolve, gave the commons time to reconsider their resolution; but on the 7th of June, there being no change, the parliament was dissolved. Not a single bill was passed in this parliament.¹

Six years elapsed before another parliament was called; and during that time the king and his ministers supported the court and state from the ordinary resources, or by such loans and benevolences as they could procure. This period is described as "halcyon days in England, no taxes being now paid, trade open to all parts of the world, a profound peace reigning everywhere."² But in 1620 this quietude was disturbed by a war which broke out in Germany, by which Frederic, Count Palatine of the Rhine, who had married the king's daughter, the princess of England, was dis-

¹ Parliamentary History, vol. v. pp. 272-302.

² *Idem*, p. 307.

possessed of all his hereditary dominions. James's pacific temper was roused to revenge his son-in-law, and to recover his territories; and the inclination of the people being in favour of the support of the Protestant interest in Germany, he ventured to call a parliament.

It met on the 30th of January, 1620-1, and was opened by a rather lugubrious speech from the king, in which he humbled himself in a manner inconsistent with high prerogative principles. He said to them, "I have often piped to you, but you have not danced; I have often mourned, but you have not lamented." He asks, "Why are you called?" and replies, "To advise the king in his urgent affairs; to give him your best advice in such errands as he shall ask of you, or you shall think fit to ask his advice in." To the house of commons he said, "You are the authors of sustenance to the king, to supply his necessities, and this is the proper use of parliaments." "The main errand, to speak the truth, which I have called you for, is for a supply of my urgent necessities." He reminds them of the eighteen years of peace they had enjoyed, "and yet, with these eighteen years, I have had less supplies than many kings before. The last queen had what came, by computation, to £135,000 a year at least. I had never above four subsidies, and six fifteenths." He told them that "*bis dat qui cito dat.*" In his first parliament he was led by the old counsellors he found, which the old queen had left; and in the last parliament there came up a strange kind of beasts called *undertakers*, a name which in his nature he abhorred, which caused a dissolution.¹

Mr. Secretary Calvert put the house in mind of what the parliament was principally called for; and it was urged that the occasion was more pressing than any since the recovery of the Holy Land. But the commons were in no hurry to supply the king's necessities, and Sir Edward Coke moved for a committee of the whole house for grievances; sarcastically saying, that "the remedying of them would encourage the house, and enable them to increase the supply." The

¹ Parliamentary History, vol. v. pp. 312-320.

committee was appointed, and the supply was deferred; but the commons, who were favourable to the recovery of the Palatinate, and had assented to a resolution encouraging the king to attempt it, passed a subsidy bill, and received the thanks of the king for their cheerfulness in passing it;—he “looked upon it as giving him their hearts and all.”¹

The commons, in this session, impeached one Edward Floyde, or Lloyde (not a member of the house), before the commons in parliament, for scandalizing the Prince and Princess of the Palatine (the king's daughter), examined witnesses against him, and sentenced him to the pillory, and to pay a fine of £1000. The lords considered this proceeding to be an infringement of their privileges, and desired a conference with the commons, alleging “that the house of commons have no power of judicature, no coercion against any, but in matters concerning their own house.” The commons yielded, and passed a resolution not to invade the privileges of the house of lords; they also entered a protestation on their journals, that “the proceedings passed in the house of commons, against Edward Lloyde, be not, at any time thereafter, drawn or used as a precedent to the enlarging or diminishing of the lawful rights or privileges of either house.”²

Parliament had sat several months, a great number of bills had been introduced, but none had been brought to a conclusion, when the house of commons incurred the displeasure of James. On the 28th of May the lord treasurer announced that the king intended to adjourn the parliament, and to *adjourn* rather than *prorogue*; and the judges being consulted, the attorney-general announced their opinion, that the effect of an adjournment, by royal commission, was to reserve all bills not passed, in the same state, until the next meeting. The commons urged the lords to join them in a petition to prevent the adjournment, and, in a conference, expressed “their grief and passion that they could not perform what they had promised for the good of the

¹ Parliam. and Constit. History, vol. v. p. 349.

² *Ibid.*, p. 435.

commonwealth." But the king was not to be moved from his determination. He attended at the house of lords to adjourn the parliament, in person. He thanked the lords for not joining with the commons in a petition for non-adjournment. He affirmed that, if the commons had made a humble answer to his message, he would have granted them ten days longer; but now he would not yield to their request. Yet, if the lords thought that eight or ten days more would expedite the bills, he would grant it; and he retired into his drawing-room that the lords might consider his proposition. The lords obtained a conference with the commons, but the commons would ask for no further adjournment. They gave to the king three petitions: "that manufactures might be distributed to the several out-ports of the kingdom; that bullion and coin might not be exported out of the realm; and that iron ordnance might not be transported."¹

The parliament re-assembled on the 20th of November following, and in this session the struggle between the king and the commons was brought to a climax.² It was opened by a speech from the lord keeper Williams, the king having retired to Newmarket on the pretence of indisposition. The lord keeper declared that his speech was only minutes of his majesty's directions—that he had "presented the natural bird as it came from the nest, without so much as a feather of his own invention." He was followed by the lord treasurer, who urged the king's wants, declared that two subsidies which had been granted by the parliament were spent about the Palatinate, promised that future supplies should be wholly employed for the recovery of the Palatinate, and ended by expressing a wish "that the commons would so handle this business as to make his majesty in love with parliaments."

¹ Parl. Hist., vol. v. p. 468.

² "In the year 1620, a parliament met to which every Englishman ought to look back with reverence." (Lord J. Russell's *Essay on the English Government and Constitution*, p. 60.)

The commons were in no haste to grant supplies, but went upon the old topics of grievances. The principal of these was the growth of popery in the kingdom, which they were the more earnest in denouncing because of the intended match between Prince Charles and the Infanta of Spain, then publicly talked of. They drew up a petition and remonstrance against Popery in general, to be presented to the king; in which they pointed out the evils that would fall on the nation from the Spanish match. The king received a copy of the petition at Newmarket, before the commons had time to present it in form; and he was so displeased that he wrote a letter to the Speaker, forbidding the petition to be sent to him. He stated in his letter that he had heard, by reports, that his distance from the houses of parliament, caused by his indisposition, had emboldened some fiery and popular spirits of the house of commons to argue and debate publicly of matters far above their reach and capacity, tending to his high dishonour and breach of prerogative royal. He commanded that "none should presume to meddle with anything concerning his government or deep matters of state;" adding, that "we think ourself very free and able to punish any man's misdemeanour in parliament, as well during the sitting as after, upon any occasion of any man's insolent behaviour that shall be ministered to us."¹

The commons despatched messengers to bring back the members whom they had sent to deliver the remonstrance; and they drew up a second petition or remonstrance, which they sent along with the former to the king by twelve of their members.² This opens with the expression by the commons, of loyal and submissive feelings towards the king, and proceeds to justify their having taken into their consi-

¹ Letter dated Newmarket, Dec. 3, 1621. Parliamentary and Constitutional History, vol. xv. p. 492.

² "When James heard of this second remonstrance, he called for *twelve chairs*, saying there were *twelve kings* a-coming." (Wilson, Parl. Hist., vol. v. p. 493.)

deration (as having been invited by the king so to do) the war abroad, and "the securing of our peace at home, which the dangerous increase and insolency of popish recusants apparently, visibly, and sensibly did lead us unto." But they did not assume to encroach or intrude upon the sacred bounds of the royal authority, "to whom and to whom only it belonged to resolve of peace or war, and of the marriage of the prince his son. But as his humble subjects, representing the whole commons of the kingdom, they resolved, out of their cares and fears, to demonstrate these things to his majesty; and that without expectation of any answer than what, at his good pleasure, and in his own time, should be held fit." They besought him to receive their former humble declaration and petition; and to so much as relates to Jesuits, the passage of bills, and the granting of his royal pardon, to vouchsafe an answer to it. "But whereas your majesty, by the general words of your letter, seems to restrain us from intermeddling with matters of government, in particulars which have their motion in courts of justice,—the generality of which words might involve those things which are the proper subjects of parliamentary occasions and discourse,—and whereas your majesty doth seem to abridge us of the ancient liberty of parliament, for freedom of speech, jurisdiction, and just censure of the house, and other proceedings there; . . . —the same being our ancient and undoubted right, received from our ancestors, without which we cannot freely debate, nor clearly discourse of things in question before us, nor truly inform your majesty, . . . —we are, therefore, now again enforced, in all humbleness, to pray your majesty to allow the same."¹

The king sent the commons a written answer, on the 11th of December, 1621, drawn up in his usual scholastic style, and often treating the positions of the commons satirically and contemptuously. Referring to their request to him not to trust to reports against them, he said, "We wish you

¹ Parliamentary History, vol. v. p. 497.

to remember that we are an old and experienced king, needing no such lessons ; being, in our conscience, freest of any king alive from hearing or trusting idle reports ; which many in your house could bear witness if ye would give as good ear to them, as you do to some tribunitial orators among you. . . . In your petition you usurp upon our prerogative royal, and meddle with things far above your reach ; and then, in a conclusion, you protest the contrary ; as if a robber would take a man's purse and then protest he meant not to rob him. For first you presume to give us your advice concerning the match of our dearest son with some Protestant (we cannot say princess, for we know none of these fit for him), and dissuade him from his match with Spain, urging us to a war with that king ; and yet in the conclusion, forsooth, ye protest ye intend not to press upon our most undoubted and royal prerogative." Adverting to their excuse of not determining anything concerning the match, but only to tell their opinion, and lay it at his feet, he desired to know, "how ye could have presumed to determine on that point, without committing high treason." And as to the receiving of their former petition, he justly rejected that suit ; "for what have you left unattempted in the highest points of sovereignty in that petition of yours, except the striking of coin ? For it contains the violation of leagues, the particular way how to govern a war, and the marriage of our dearest son. These are unfit things to be handled by parliament, except your king should require it of you. For who could have wisdom to judge of things of this nature, but such as are daily acquainted with the particulars of treaties, and of the variable and fixed connection of affairs of state, together with the knowledge of the secret ways, ends, and intentions of princes in their several negotiations ? Otherwise a small mistake of matters of this nature may produce more effects than can be imagined. And, therefore, *ne sutor ultra crepidam*. And besides, the intermeddling of parliament with peace or war, and the marriage of our dearest son, would be such a dimi-

nution to us and our crown in foreign countries, as would make any prince neglect to treat with us, except they might be assured by the assent of parliament. We cannot omit to show you how strange we think it, that you think we meant to restrain you of your ancient privileges in parliament. . . . Although we cannot allow of the style calling it *your ancient and undoubted right of inheritance*, but could rather have wished that ye had said that your privileges were derived from the grace and permission of our ancestors, (for most of them grew from precedents, which shows rather a toleration than an inheritance,)—yet we are pleased to give our royal assurance that so long as you contain yourselves within the limits of your duty, we will be as careful to maintain and preserve your lawful liberties and privileges as ever any of our predecessors were; nay, as to preserve our own royal prerogative.”¹

The commons met the king’s answer (which even the lord keeper considered so harsh that he wished it to be mitigated) by giving over all business; and foreseeing that the king, despairing of supply, would dissolve the parliament, they resolved to place on record a declaration of their privileges. They, therefore, drew up a bold and comprehensive protestation in vindication of their privileges, which was recorded in the journals of the house on the 18th of December. On the same day, the prince, by virtue of a commission from the king, adjourned the parliament to the 8th of February following. This great constitutional protestation is as follows:—

“The commons, now assembled in parliament, being justly occasioned thereunto concerning sundry liberties, franchises, privileges, and jurisdictions of parliament, do make this protestation following:—That the liberties, franchises, privileges, and jurisdictions of parliament, are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and the defence of the realm, and of the

¹ Parliamentary History vol. v. p. 507.

Church of England, and the maintenance and making of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses, every member of the house of parliament hath, and of right ought to have, freedom of speech, to propound, treat, reason, and bring to conclusion the same: and that the commons in parliament have like liberty and freedom to treat of those matters, in such order as in their judgment shall seem fittest; and that every member of the said house hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the house itself) for or concerning any speaking, reasoning, or declaring any matter or matters, touching the parliament, or parliament business; and that if any of the said members be complained of, and questioned for anything done or said in parliament, the same is to be showed to the king, by the advice and assent of all the commons assembled in parliament, before the king give credence to any private information.”¹

The king sent for the journals, and he “rent out the protestation with his own hand;” he afterwards published a declaration, declaring it invalid, annulled, void, and of no effect. In a subsequent proclamation he reviewed the proceedings of the parliament, and attributed its failure to “some ill-tempered spirits, who by their cunning diversions had imposed on him the necessity of discontinuing it.” But he stated his intention to govern his people in the same manner as his predecessors; and in due time to call another parliament.²

Nothing strikes us with more surprise in the comparison we make of these times with our own, than the facility with which the kings and their councils inflicted vengeance on the most eminent of their parliamentary opponents. The ‘ill-tempered spirits,’ to whom the king referred, were soon

¹ Parl. Hist., vol. v. p. 512. Commons’ Journals, vol. i. p. 668.

² *Idem*, p. 521.

made known by the steps that were taken to punish them. Sir Edward Coke and Sir Robert Philips were committed to the Tower; Mr. Selden, Mr. Pym, and Mr. Mallory to other prisons and confinements. Sir Dudley Diggs, Sir Thomas Crew, Sir Nathaniel Rich, and Sir James Perrot, were sent, by a sort of honourable banishment, to Ireland, as commissioners under a royal commission, to inquire into sundry matters for his majesty's service. Sir John Saville and one or more influential county members, whose influence in the commons was directed against the government, were raised to the peerage and the house of lords.¹

A new parliament met on the 19th of February, 1623. The first period of its sitting was occupied chiefly in the business of the treaties with Spain; by one of which Prince Charles was to marry the Infanta, and by the other the King of Spain engaged by his influence to procure the Emperor of Germany and the Duke of Bavaria to restore the Palatinate to the daughter of James and her husband. When these treaties were almost mature, and ready for performance, pique or interest rendered it the policy of Buckingham, to put an end to them; and, notwithstanding James's strong desire for their completion, the duke's influence over the king and the prince made it easy for him to induce them to enter into his views. By arrangement with them, the duke who had been the companion and adviser of Charles on his visit to Madrid, explained to parliament the reasons for considering it advisable to abandon the treaties; and the parliament, glad to be rid of an alliance between the heir of the throne and a Catholic princess, advised the king to break off the treaties. They, moreover, sanctioned his entering into a war for the recovery of the Palatinate, declaring that they would grant the greatest aid ever given in parliament—three entire subsidies, and three fifteenths to be paid within one year after the king's declaration of his abandonment of the treaties; but they added the stipulation, "that the money be paid into the hands, and expended

¹ Parl. Hist., vol. v. p. 525.

by the direction, of such committees or commissioners, as should be agreed upon in that session of parliament,"¹—a stipulation that was embodied in the act by which the subsidy was granted; but which was looked upon as an extraordinary innovation. For the better employment of the moneys, eight citizens of London were appointed treasurers, and ten other selected persons to be his majesty's privy council for the war; all of whom should make oath,—the treasurers, that none of these moneys should issue out of their hands without warrant from the council of war;—and the council, that they should make no warrants for the payment of those moneys, but only for the end above-mentioned. And further, all should be accountable for their doings and proceedings, to the commons in parliament, when they or any of them should thereunto be required.

An important constitutional proceeding occupied this parliament,—the impeachment of a minister, the Earl of Middlesex, lord treasurer, for bribery and peculation in his high office. He was arraigned before the house of lords on articles exhibited by the commons; and adjudged to lose all his offices, to be imprisoned during the king's pleasure,—to pay a fine of £50,000,—never to sit in parliament again, nor to come within the verge of the court.²

The same parliament was occupied with the consideration of another important subject,—the grant of monopolies, and the power of dispensing with penal laws and forfeitures exercised by the crown. In the time of Elizabeth³ the parliament remonstrated against the injury done to manufactures and trade by the grants of monopolies; but they were continued in this reign to a great extent. The crown, also, assumed as its prerogative the power to dispense with and to suspend the action of laws, called the *dispensing power*. By that prerogative it exempted favoured individuals from the operation of penal laws, and from the forfeitures which a breach of them demanded. By another nearly similar pre-

¹ Parl. Hist., vol. vi. pp. 1–110, *passim*. ²¹ James I., cap. 34.

² *Idem*, pp. 132, 308.

³ See *ante*, p. 220.

rogative, called the *suspending power*, it made royal grants to favoured individuals, contrary to the terms of existing statutes, by inserting in the grants, or letters-patent, the *non-obstante* clause,—*notwithstanding* the particular statute which the grants contravened.¹ It also made to its friends and courtiers grants of fines and penalties which had accrued, or which were expected to accrue to the crown, from persons convicted, or expected to be convicted, under penal statutes; and of the profits to be derived from the escheat of persons dying without legal heirs.

No prerogatives could be more unjust or more injurious than these; and they were put an end to by a statute of this parliament. Its title is, “An Act concerning Monopolies, and Dispensations with Penal Laws, and the Forfeitures thereof.” In its preamble it refers, as the foundation of its enactments, “to a royal judgment, which King James did, in 1610, publish in print to the whole realm and to all posterity, that all grants and monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, were contrary to the laws,—which royal declaration was truly consonant and agreeable to the ancient and fundamental laws of the realm.”

It therefore declared that “all monopolies, commissions, grants, licenses, charters, and letters-patent, for the *sole* buying, selling, making, working, or using anything within the realm, or of any other monopolies;—or of power, liberty, or faculty to dispense with any others;—or to give license or toleration to do, use, or exercise anything against the tenour or purport of any law or statute;—or to give or make warrant for any such dispensation, license, or toleration to be had and made;—or to agree or compound with any others for any penalty or forfeitures limited by any statute;—or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that was or should be due by any statute, before judgment thereupon had; and all proclamations, inhibitions, restraints, warrants of assist-

¹ See *ante*, p. 130.

ance, and all other matters and things whatsoever, anyway tending to the strengthening, furthering, or countenancing of the same, or any of them,—were altogether contrary to the laws of the realm, and so were and should be utterly void, and in no wise be put in use or executed.”¹

This declaration of the law is enforced by provisions for rendering monopolies impracticable ; and one provision saves from the operation of the act, and declares that it “ shall not extend to letters-patent and grants of privilege for the term of fourteen years, and under, thereafter to be made, of the sole working or making of any manner of *new* manufactures within this realm, to the true and first inventor or inventors of such manufactures, which others, at the time of making such letters-patent and grants, shall not use.” It is under this exception from the act, that the crown has exercised, and now exercises, the right of granting letters-patent for new inventions.

¹ 21 James I., cap. 3.

CHAPTER XV.

CHARLES I., HIS FIRST, SECOND, AND THIRD PARLIAMENTS, AND THE PETITION OF RIGHT.

1625-1628.

Scope of the Inquiry.—Charles's Policy in relation to the Parliament.—First Parliament.—King's Speech.—Adjourned.—Re-assembled at Oxford.—Statement of Grievances.—Message to hasten Supply.—Consideration of it deferred.—Parliament dissolved.—Expedients to raise Money.—Second Parliament opened.—Supply urged, but postponed by intended Impeachment of Buckingham.—Commons' Answer, and King's haughty Reply.—Commons vote Supplies conditionally.—Reproved by the King and Lord Keeper.—Commons justify their Proceedings, and enter a Protest on their Journals.—Commons consider of a Supply.—Charges against Buckingham.—Members of the Commons imprisoned.—The King's Explanation.—Sir D. Digges and Sir J. Elliot discharged.—Lords' Privileges.—Earl of Arundel.—King's Letter to the Speaker, urging Supplies.—Parliament dissolved. Expedients to raise Money.—Compulsory Enforcements.—Expedition to Rochelle.—Nation's Alarm.—Third Parliament called.—The King's Speech.—Commons' Proceedings.—Committee of Grievances.—Commons' Resolutions.—Conference with the Lords.—Commons promise Subsidy, and declare their Right to manage their own Debates.—Billeting of Soldiers.—Lords' Debate on the Liberty of the Subject.—King's Speech, proposing to the Commons to rely on his Word.—Message from the King.—Another Message, consenting to a Bill being drawn.—The Commons again decline to rely on the King's Word.—Conferences concerning the Petition of Right.—Royal Letter to the Lords to shorten the Debate.—Petition of Right.—Meeting of Parliament for the Royal Assent.—The King's evasive Answer.—Mainwaring's Sermons.—Mainwaring impeached.—King's Message, threatening to close the Session.—Debate and Scene in the Commons.—Speaker leaves the Chair and the House.—Debate in his Absence.—King's Message.—Conference between Lords and Commons on Petition of Right.—Royal Assent given in due form.—Joy of the Commons.—

Subsidies granted.—Sentence on Mainwaring.—Remonstrance against Buckingham.—Tonnage and Poundage.—Parliament prorogued.—Mainwaring pardoned.—Parliament re-assembled, 1628-9.—Complaints against the Crown.—False Print of the Royal Assent to the Petition of Right.—Seizure of Members' Goods for Tonnage.—Bill for Tonnage and Poundage.—Proceedings against Members to recover it.—Oliver Cromwell's first Appearance.—Commons support the Merchants.—Examine the Custom-house Officers.—Another Scene in the Commons.—Speaker refuses to put a Question.—Outbreak and Resolution.—King endeavours to force the House to adjourn.—Proclamation dissolving the Parliament.—Lord Clarendon's Opinion of that Measure.

CHARLES I. ascended the throne on the 27th of March 1625. His reign is, perhaps, the most exciting in our national history. In it, the great contest between prerogative and freedom, was brought to decision by the *ultima ratio* of war, followed by the execution of the king. These events long divided the nation into two parties; one of which deprecated the war as a great rebellion, and the execution of the king, as sacrilegious parricide; the other justified the war, as a national and just resistance of arbitrary and illegal power; and the king's execution as the lawful punishment of a tyrant.

It is not necessary to our purpose to follow the course of that memorable history through the civil war; but the contest between Charles and his parliaments, prior to the civil war, abounds with events and circumstances that must not be overlooked. The commons then asserted and maintained principles of constitutional freedom with indefatigable perseverance and boldness; and transmitted them to posterity as privileges of parliament, or in general statutes. Of the latter, the most important is that known as the Petition of Right; a landmark of the constitution, inferior only in importance to Magna Charta, and Confirmatio Chartarum. It was the constitutional result of the first three parliaments of Charles; but, unlike its great predecessors, which were the works of the barons, this proceeded from the commons. The only other statutes of this reign, of a constitutional

nature, were passed in the first year of the Long Parliament. The following twenty years are blotted out of our constitutional history. The Civil War, the Commonwealth, the Protectorate of Cromwell, filled them indeed with momentous events; and great changes were for the time made in the system of government. But these changes were obliterated, with the national consent, at the restoration of Charles II., in 1660; and no trace of them appears in our statute-book. There the reign of Charles II. is treated as commencing at the death of his father; the first statute after his restoration bearing the date of the twelfth year of his reign. Highly interesting and important, therefore, as is the history of the period referred to, we may exclude it from our present consideration.

The characteristic feature of Charles's reign, in the relation between him and his first three parliaments, was, on his part a constant endeavour to obtain supplies without diminishing the absoluteness of his prerogative; on their part, to make the supplies the condition of concessions in favour of civil liberty. He was but twenty-five years of age when he ascended the throne; and, as might have been expected from his education under his father James, he was imbued with the highest notion of his royal power and prerogative. But he had to encounter in parliament, the same band of patriots that had so boldly struggled with his father,—the most able and determined men in the nation; against whom Charles, firm in "the divinity that doth hedge a king," pitted his friend and favourite, the Duke of Buckingham, as his chief minister, who had been popular in the latter parliament of James, but of "whose exorbitant power and abusive carriage" the parliament of Charles had conceived the greatest apprehension and dislike.

Charles, moreover, placed himself in a disadvantageous condition for a contest with parliament, by adopting the war with Spain, which his father had threatened, but which was not yet commenced, for the recovery of the Palatinate; and from which his accession gave him an excuse for withdraw-

ing. By entering into war he increased his necessities to an extent so great that they could not be supplied by the ordinary means of the crown, which had been so reduced as to be barely sufficient for peaceful times;¹ on the other hand, the people gaining a positive advantage by the withholding of subsidies, their representatives in parliament could coolly and deliberately pursue their policy of requiring concession of grievances, as the condition of supply.

Charles was anxious to assemble parliament immediately after his accession, in order to obtain supplies for the war; but a plague was raging, and his marriage with the Princess Henrietta-Maria of France occupied his attention. Two days after his marriage, on the 18th of June, 1625, parliament assembled. He opened it in a good-humoured speech, in which, referring to the votes of the parliaments of James, he held the present parliament responsible for the war; and he reminded them that he was employed by parliament to advise his father to break off treaties with Spain for peace, and his own match with a Spanish princess.

Referring to the reports of malicious men that he was not so true a keeper and maintainer of the true religion as he professed, he assured them that he might say with St. Paul, that he had been trained up at Gamaliel's feet. He was followed by Lord Keeper Williams, who explained that the king's main reason for calling the parliament was to remind them of their engagements for the recovery of the Palatinate, and to let them understand that the supplies granted in the last parliament of James were spent (whereof the account was ready), together with as much more of the king's own revenue. He added that the king desired them to bestow this first meeting on his, or rather on their actions; and the next should be theirs, as soon and as long as they pleased, for domestic business.²

The commons tried to procrastinate. The plague was raging; and they complained that they were distracted from

¹ Mr. Pym's speech, *Parliamentary History*, vol. viii. p. 174.

² *Rushworth's Historical Collections*, ed. 1659, vol. i. p. 171, ed. 1659.

business by the tolling of the bell every minute whilst they were speaking. They petitioned the king for a recess, "this sickly season." He answered that as soon as he should hear that they were ready with their bills, he would put an end to the session. Next day the commons passed a bill, granting two entire subsidies. They also passed a bill granting tonnage and poundage for one year, instead of for life, and thus opened an unceasing dispute between the king and the parliament. The lords, on the ground that former grants to the king's predecessors had been for life, refused their consent to the bill, and Charles caused the duties to be collected without any parliamentary authority.¹

The parliament adjourned on the 11th of July on account of the plague; it reassembled in August, at Oxford, in the great hall of Christchurch. The king again addressed them, and reminded them of their obligations to provide for the war. His secretaries informed the house of commons that the two subsidies they had granted were either spent or anticipated, and they moved for a further supply of two subsidies and two fifteenths. The commons debated this motion at great length, without coming to any decision; their antipathy to the Duke of Buckingham influencing them against the king.

Sir Robert Cotton (the celebrated antiquarian), a member, compared the present state of things with the time when the late king was served by the late queen's ministers, and gave expression to what probably the commons then considered as the most prominent grievances. Debts of the crown were not so great; monopolies and illegal grants not so often complained of in parliament; trade flourished; pensions not so many; all things of moment were carried by public debate at the council-table; no honours nor places of judicature set to sale; laws against priests and recusants were executed; resorts of papists to ambassadors' houses

¹ The subsidy of tonnage and poundage was granted, as we have seen, to every successive sovereign for life, from the time of Richard II. See *ante*, p. 98.

barred and punished; no wasteful expenses in fruitless embassies; nor any transcendent power in any one minister; for matters of state the council held up the fit and ancient dignity. He concluded his speech with an allusion to Buckingham's supremacy in the king's councils, by offering up his humble desire that since his majesty had with advised judgment elected wise, religious, and worthy servants to attend him in that high employment, he would be pleased to advise with them together, and not be led by young and single counsel.

The debate not resulting in any supply, the king sent a message to the house of commons through the chancellor of the exchequer, urging them for a present answer about his supply, and giving them his royal word that in winter they should meet again and hold together till they had perfected all those things for the king and commonwealth which were then before them; and with some pathos, he desired them to consider that this was the first request he ever made to them. The house immediately entered into debate on the message, which ended in a resolution that a committee of the whole house should meet on the following morning at eight o'clock, to consider what return to make to the king's message.¹ But instead of the latter, the house went upon a complaint against an admiral, for suffering a pirate to take an English ship before his face—a disgrace which they connected with Buckingham as lord admiral. On the following day the house agreed to a protestation to the king that they "would be ready in a convenient time, and in a parliamentary way, freely and dutifully to do their utmost endeavours to discover and reform the abuses and grievances of the realm and state; and in like sort to afford all necessary supply to his majesty, upon his present and all other his just occasions." But Charles, aware of their proceedings,

¹ "The house met always at eight o'clock A.M., and rose at twelve,—which were the old parliamentary hours,—that the committees, upon whom the greatest burden of the business lay, might have the afternoons for their preparation and despatch." (Clarendon's History, vol. i. p. 132.)

and believing there was no present intention to grant a supply, resolved to show his displeasure by dissolving parliament; and whilst the commons were preparing to present their protestation to the king, the usher of the black rod entered their house and summoned them to the house of lords, where the parliament was dissolved by commission.

By the dissolution of the parliament the ordinary constitutional means of providing money to defray the charge of the fleets and armies were cut off, and recourse was had to the old expedient of compulsory gifts or loans. Letters were addressed in the king's name to the lord-lieutenants of counties, directing them to collect as many persons' names as might be of ability to furnish the king with money; and "to return in a book the names of the persons, their dwellings, and what sums you think they may spare, that we may direct our privy seals unto them."¹ But they were cautioned not to deal with noblemen, nor with the clergy, who were to be left to their metropolitans. The privy seal followed the return, and left the involuntary contributor little room for escape.²

SECOND PARLIAMENT.

Although these loans were industriously pressed, they were not sufficiently productive to meet the king's urgent necessities, and he resolved to call another parliament, which assembled on the 6th of February, 1625-6, still in the first year of his reign.

¹ Parliamentary History, vol. vi. pp. 399-403.

² Parliamentary History, vol. vi. p. 407. The privy seal in form was addressed to the proposed contributor, to whom it announced that "the sum which we require of you by these presents is £——, which we do promise in the names of us, our heirs, and successors, to repay to you or your assigns, within eighteen months after the payment thereof unto the collector. The person whom we have appointed to collect is A. B., to whose hands we do require you to send it within twelve days after you have received this privy seal, which together with the collector's acquittance shall be sufficient warrant unto the officers of our revenue for the repayment thereof, at the time limited. Given," etc. (*Idem*, p. 409.)

Sir Edward Coke and several other members of the last parliament were excluded from the present, the crown having appointed them sheriffs of their respective counties, and thus some of the most formidable opponents were removed. But Charles in no way attempted to conciliate the commons. Although courteous in his speeches, and proposing his views with a specious aspect of fairness, he did not condescend to imitate the example of his great-grandfather, Henry VII., by submitting to parliament, even as a matter of wary policy, the expediency of the war, and thus securing its approval and assistance. Charles's view of his relation to the house of commons was that he was an absolute prince; and that if the commons, who assembled by his permission, did not perform their duty of raising supplies with the least inconvenience to the people, he was empowered by his prerogative to tax them without consent of parliament. The commons had practically admitted this theory in the reigns of the Tudors; but the spirit and freedom of the Plantagenet period were now revived; and led by men of commanding intellect and great determination of purpose, and stimulated also by the fear that the purity of religion was in danger from the king's favour to papists, the commons presented an unwavering opposition to every illegal or enlarged exercise of the royal prerogative.

Sir Thomas Coventry, the new lord keeper, opened the parliament in a high prerogative speech. The commons required every member, before he entered the house, to take the sacrament, as a test for the exclusion of papists.¹ They widened the difference between the king and themselves by impeaching the Duke of Buckingham; and whilst they were preparing materials for the charges, the king sent a letter to

¹ At the beginning of a new parliament all the members of the house of commons were sworn before the lord steward of the king's house before they could take their seat. It was not the custom to enter upon any important business in the first fortnight, both because many members used to be absent so long, and that time was thought necessary for the appointment and nomination of committees, and for other ceremonies and preparations that were usual. (Clarendon's History, p. 132.)

the Speaker, urging for a full and perfect answer of what they would give for his supply, according to his expectation and their promises; and stating that, "after they had satisfied him in his reasonable demand, he would not only continue them together at that time, but call them shortly again, to perfect those necessary businesses which should be left undone."

The commons, full of their intended impeachment of the Duke of Buckingham, answered "that because they could not doubt but that the king would be pleased graciously to accept the faithful and necessary information and advice of his parliament (which could have no end but the king's honour and safety of his realm) in discovering the causes, and proposing the remedies of, those great evils which had occasioned his wants and his people's griefs; they therefore, in full confidence and full assurance of redress therein, did with one consent propose that they really intend to supply and assist the king, in such a way and in so ample a manner, as might make him safe at home, and feared abroad;—for the despatch whereof they would use such diligence as the king's pressing and present occasions should require."

Charles received their observations as directed against Buckingham, and he sent a haughty reply to the Speaker. After thanking the commons for their answer, he observed that he must let them know that he would not allow any of his servants to be questioned among them, much less such as were of eminent place and near unto him. He told them that he saw that they specially aimed at the Duke of Buckingham; what the duke had done, since the late king's time, to change their minds about him, he knew not; but he denied that the duke had done anything concerning the public or commonwealth but by his (the king's) special directions and appointment, and as his servant. He concluded by saying, "I wish you would hasten my supply, or else it will be worse for yourselves; for if any ill happen, I think I shall be the last that shall feel it;"—a threat which shows that Charles had not calculated the difficulty of his position in a contest with the parliament, or that he con-

fidently reckoned on obtaining sufficient money by force of his prerogative.¹

The commons resolved that three subsidies and three fifteenths should be granted to the king, payable at three different times ; the bill to be brought in when they had presented their grievances and received the king's answer to them. That resolution, which was an indefinite procrastination of the supply, gave the king great offence ; and on the following day he sent a message to both houses, requiring their attendance at Whitehall on the next day. He addressed them in a speech in which he complimented and thanked the lords for their care of the kingdom, and expressed his sorrow to the commons that he might not justly give the same thanks to them ; but he must show them their errors and, as he might call it, unparliamentary proceedings. The lord keeper, as on the former occasion, enforced the king's speech, and observed that "for the manner of the supply, it was in itself very dishonourable and full of distrust ; for they had put to it the effect of a condition, since the bill was not to come into their house until their grievances were both preferred and answered. He required their final answer, what further supply they would add to that they had already agreed on ; and that to be without condition, either directly or indirectly, for the supply of the king's great and important affairs.

The king's rebukes and his lord keeper's demand called forth a remonstrance from the commons to the king, which

¹ Parliamentary History, vol. vi. p. 430. Hume observes that, "while the commons were warmly engaged against Buckingham, the king seemed desirous of embracing every opportunity by which he could express a contempt and disregard for them. No one was at that time sufficiently sensible of the great weight which the commons bore in the balance of the constitution. The history of England had never afforded one instance where any great movement or revolution had proceeded from the lower house. And as their rank, both considered as a body and as individuals, was but the second in the kingdom, nothing less than fatal experience could engage the English princes to pay a due regard to the inclinations of that formidable assembly." (History of England, ch. 50.)

was presented to him on the 5th of April by a select committee. They justified their proceedings against Buckingham by one of those declarations of rights which had now become usual on important occasions; by which, as they could not resist, they recorded on their journals their protest against the prerogatives assumed by the king. They declared "that it had been the usual, constant, and undoubted right and usage of parliament to question and complain of all persons, of what degree soever, found grievous to the commonwealth, in abusing the power and trust committed to them by their sovereign. And as to the supply, that though it had been the long custom of parliaments to handle the matter of supply with the last of their businesses; yet, at that time, out of extraordinary respect to his person and care of his affairs, they had taken the same into speedy consideration, and had agreed to a resolution for a present supply, as was well known to the king.¹

Having asserted their constitutional rights, the commons proceeded to the consideration of the supply. It was pointed out on the part of the king that the subsidies had decreased in productiveness, and therefore that one subsidy and one fifteenth more ought to be given, payable after the three agreed to had been collected. A bill for a grant of tonnage and poundage was also in the course of preparation by the house; but concurrently with it, the house ordered to be drawn up a remonstrance to the king against his taking those duties without grant of parliament. The addition of a fourth subsidy was agreed to, and when the account of the whole grant was signified to the king, he said "that he accepted it in very good part, but desired such speed might be used in it that it might do him good."²

It would not promote the object we have in view, to enter into the details of the impeachment of Buckingham. The charges against him were founded on the abuse of his influence with the king, and thus obtaining a plurality of appointments,—trafficking in offices,—and on the abuse of his power

¹ Parliamentary History, vol. vi. p. 464. ² *Idem*, vol. vii. p. 36.

as lord high admiral; and they conclude with a charge of having given a posset and a plaister to the late King James in his last illness, referring to suspicions of poison which were publicly talked of at the death of James. These were not treated otherwise than as personal charges; no constitutional question of ministerial responsibility was involved. But there arose a question of privilege of constitutional importance, which requires our notice. The commons presented their charges against the duke to the lords, and appointed eight of their most distinguished members to support the charges before a committee of the upper house. Two of them, Sir Dudley Diggs and Sir John Elliot, gave offence to the king in their speeches before the lords, and he committed them to the Tower.¹

The king went to the house of lords and explained what he had done. Seated on the throne, he said that he had thought fit to take order for the punishing some insolent speeches spoken to them yesterday. "I have been too remiss," he continued, "in punishing such speeches as concern myself—not that I was greedy of their monies, but that Buckingham, through his importunity, would not suffer me to take notice of them, lest he might be thought to have set me on, and that he might come the forwarder to his trial. And to approve his innocency as touching the matters against him, I can myself be a witness to clear him in every one of them."²

The commons resented the imprisonment of their two members, and resolved not to do any more business till they

¹ The managers were Sir Dudley Diggs, Mr. Herbert, Mr. Selden, Mr. Granville, Mr. Whitby, Mr. Pym, Mr. Wandesford, and Sir John Elliot. Sanderson, in his *'Life of Charles I.,'* says that Sir Dudley Diggs and Sir John Elliot, whom he calls the van and the rear of the commons, were beckoned out of the house of lords at the time of the impeachment to speak to two gentlemen, who proved to be messengers with a warrant to carry them both to the Tower, where they laid until the judges joined in one opinion, "that their restraint was an arrest of their whole body, no reason being given to the house for it, and a breach of privilege must follow. That being remonstrated to the king, they were discharged upon it." (Sanderson's *Life of Charles I.*, p. 45.) ² Parl. Hist., vol. vii. p. 39.

were righted in their privileges. The vice-chamberlain of the household, Sir Dudley Carleton, endeavoured, in a speech, to frighten the house into submission,—“ beseeching them not to move his majesty with trenching upon his prerogatives, lest you bring him out of love with parliaments.” The lords came forward to the relief of this difficulty with the assurance of a large number of the peers that there had been a misapprehension as to the words used by Sir Dudley at the conference; and the king being satisfied that Sir Dudley had not spoken the words imputed to him, he was released from the Tower; and next day he took his seat in the house, and made a protestation “ that the words charged on him were so far from being his words, that they never came into his thoughts.”

But the case of Sir John Elliot was not so easily disposed of. In addition to the freedom of his remarks on Buckingham, he had used in speaking of him contemptuous expressions. It was particularly complained that he had spoken of him as “ that man.” The chancellor of the exchequer informed the house that “ although the king disliked the whole manner of his delivery of that which he had commandment from the house to speak, yet the king charged Sir John Elliot with things *extra-judicial* to that authority.” It was desired that the word ‘extra-judicial’ should be explained. Mr. Chancellor said it was the king’s own word, and therefore he could not do it. On the 20th of May a motion was made, with apparent irony, that Sir John Elliot should come and take his seat, having been charged with high crimes, *extra-judicial* to that house. The ministers allowed of his coming, and the vice-chamberlain having repeated the charges, Sir John justified what he had said as authorized by his instructions from the house. The house resolved that Sir John Elliot had not exceeded the commission given him in the late conference with the lords; and a like resolution was carried in the case of Sir Dudley Diggs, and both without one negative.¹

¹ Parliamentary History, vol. vii. p. 166.

The house of lords, encouraged by the success of the commons, resisted the interference of the king with the privileges of their house. The king, on the 14th of March, committed the Earl of Arundel to the Tower, during the sitting of parliament, the cause of the commitment not being expressed. The king supposed that he should satisfy the lords by explaining that the earl was restrained for a misdemeanour personal to him, and having no relation to matters of parliament. But the house of lords, after a search for precedents, came to a resolution "that no lord of parliament, the parliament sitting, or within the usual time of the privileges of parliament, is to be imprisoned or restrained, without sentence or order of the house, unless it be for treason or felony, or refusing to give surety of the peace." They framed a petition for the release of the earl, which was presented by the whole house. The king procrastinated, and evaded a direct answer, taking exception to expressions used by the lords, in addresses presented to the king, in furtherance of the original petition. At length, on the 8th of June, the king took the restraint off the earl, and he returned to the house.¹

The subsidies, which the house of commons had agreed to, were a very liberal supply,² and, as we have seen, were approved by Charles, "provided he had them with speed, so that they might do him good." But several weeks elapsed without any progress towards completing the grant; and Charles, impatient of delay, and, it would seem, having taken the resolution to punish it by a dissolution of parliament, showed his displeasure in a letter to the Speaker, which he desired to be read publicly to the house. He pointed out that, unless the supply were presently concluded, it would

¹ Parliamentary History, vol. vii. pp. 177-180.

² Lord Clarendon says, "In the second parliament there was a mention and intention declared of granting five subsidies, a proportion (how contemptible soever in respect of the pressure now every day imposed) scarce ever before heard of in parliament." (*History of the Rebellion*, vol. i. p. 5.)

be of little use. He held it necessary to let them know that he should account all further delays and excuses to be express denials; and he signified to them that he expected that they would forthwith bring in their bill of subsidy, to be passed without delay or condition, so as it might fully pass the house by the end of next week at the furthest; which, if they did not, it would force him to take other resolutions. He made his accustomed promise to continue their sitting, or to allow them to resume it in winter, if they finished this business according to his desire; and if, by their denial or delay, anything of ill consequence should fall out, either at home or abroad, he called God and man to witness that he had done his best to prevent it, by calling his people together to advise with him; by opening the weight of his occasion to them, and by requiring their timely help and assistance in those actions wherein he stood engaged by their own counsel. The commons prepared a declaration by way of answer to the king's letter. It was agreed to on the 14th of June, and ordered to be presented to the king by the Speaker, attended by the whole house. But, in the meantime, the king had determined to dissolve the parliament; and, on the 15th of June, the commons were summoned to the house of lords, to hear the royal commission for the dissolution read. The peers petitioned the king, and offered him their loyal and faithful advice to continue the parliament, by which the dangers at home and abroad might be prevented, and his majesty made happy in the duty and love of his people. The king, angry and impetuous, answered, "No, not a minute," and the parliament was dissolved.¹

This abrupt and ill-considered measure forced the king upon the old illegal projects for supplying his necessities. An order in council ordered all the tonnage and poundage duties to be levied and paid. A commission was issued to arrange with Jesuits, popish priests, and recusants, to dis-

¹ Parliam. History, vol. vii. p. 290. ² Sanderson's Life of Charles I., p. 58.

pense with the laws and penalties affecting them, in consideration of money paid to the king.¹ The nobility were applied to ; a loan of £100,000 was demanded from the city of London. All the seaport towns were ordered to fit out ships for the guarding of their own coasts,—the city of London being ordered to set out twenty of the best that lay in the Thames. To some privy seals were proposed, to others benevolences ; but these means, although illegal and unconstitutional, having some excuse from precedents in former reigns, were considered less obnoxious than the step resorted to, of levying and exacting, under the name of a loan, the subsidies conditionally voted by the house of commons, in the last parliament, as if the grant had been perfected by an act.

Many persons refused payment of the imposed loan, and were committed to prison. Amongst these we find the eminent names of Sir Thomas Wentworth and John Hampden, who were, by order in council, removed to prisons distant from their own counties. Other five gentlemen, so imprisoned, obtained writs of habeas corpus ; but they were remanded to prison by the judges, as being imprisoned by the command of the king. Sir Peter Hayman, refusing payment, was called before the council, who sent him on service

¹ Dr. Lingard thus explains this source of revenue:—"The law had left it to the king's option to exact from lay recusants the fine of twenty pounds per month, or to take two-thirds of their personal estate ; but, in lieu of these penalties, he allowed them to compound for a fixed sum, to be paid annually into the Exchequer. Many hastened to avail themselves of this indulgence. The amount of the composition was determined at the pleasure of the commissioners ; and the Catholic, by the sacrifice, sometimes of one-tenth, sometimes of one-third of his yearly income, purchased, not the liberty of serving God according to his conscience (that was still forbidden under severe penalties), but the permission to absent himself from a form of worship which he disapproved. The exaction of such a sacrifice was irreconcilable with any principle of justice ; but, inasmuch as it was a mitigation of the severities inflicted by the law, the recusants looked upon it as a benefit ; the zealots stigmatized it as a crime in a Protestant sovereign." (Lingard's History of England, vol. vii. p. 365.)

to the Palatinate. But the opposition of these eminent men, on constitutional grounds, did not prevent the compliance of great numbers of the people, and a large sum was raised. It was employed in fitting out an expedition for the relief of the Protestants of Rochelle, the conduct of which was entrusted to Buckingham; but he abandoned the Protestants to the tender mercy of the French king, and made a descent on the Isle of Rhé.¹

The expedition was unsuccessful. The people, finding themselves at war with both France and Spain, became alarmed at their defenceless state. A general desire was expressed that parliament should assemble. The king held a great council at Whitehall, to which Sir Robert Cotton was called to give his advice. He advised that a parliament should be called, at which the king should endeavour, by a gracious yielding to their just petitions, to win the people's hearts, which would give him their purses; and that Buckingham, to remove the people's personal dislike towards him, should appear as a prominent adviser for calling the parliament.² "But could it be imagined," says Lord Clarendon, "that those men would meet again, in a free convention of parliament, without a sharp and severe expostulation and inquisition into their own right, and the power that had imposed upon that right?"³

THIRD PARLIAMENT.

A new parliament met on the 17th of March, 1627-8, in the third year of Charles's reign. It had been deemed advisable to release the persons imprisoned for refusing the loan; and seventy-eight were released, of whom some were chosen into the new parliament. Charles opened it in a threatening and unconciliatory speech. "There is none here," he said, "but knows that common danger is the cause of this parliament, and that supply, at this time, is the chief end of it. . . . I will use but few persuasions: for if these

¹ Parliamentary History, vol. vii. pp. 323-328.

² *Idem*, pp. 329-338.

³ Clarendon, vol. i. p. 5.

be not sufficient, then no eloquence of men or angels will prevail. . . . If you (as God forbid) should not do your duties, in contributing what the state at this time needs, I must, in the discharge of my conscience, use those other means which God hath put into my hands, to save that which the follies of some particular men may otherwise hazard to lose. Take not this as a threatening, but an admonition; for I scorn to threaten any but my equals.”¹ The lord keeper followed, and urged immediate supply by various arguments:—“the duty they owed to the king by the law of God, by the law of nature, and natural allegiances;—that the war was advised by the parliament, and assistance proffered; and, because aids granted in parliament work good effects for the people, being commonly accompanied with wholesome laws, gracious pardons, and the like. Besides, just and good kings, finding the love of their people, and the readiness of their supplies, may the better forbear the use of their prerogatives, and moderate the rigour of the laws towards their subjects. If this parliament, by their dutiful and wise proceedings, shall but give occasion, his majesty will be ready, not only to manifest his gracious acceptance, but to put out all memory of those distates that have troubled former parliaments.”²

The commons, as in the preceding parliament, all took the sacrament, and, at their desire, the king appointed a general fast. The late proceedings furnished them with numerous grievances; and complaints were made against the government for billeting of soldiers upon the people, raising money by loans, and, above all, for the imprisonments for refusal of the loan;—and especially for the violation of the principle of the writ of habeas corpus, in the case of the five gentlemen whom the judges re-committed to prison, because it was returned that they were committed by command of the king. A motion was made for a committee of grievances; and the utmost concession which the king’s secretary could obtain, in the way of attention to his demand of ships and

¹ Parliamentary History, vol. vii. p. 339.

² *Idem*, p. 345.

men for the king's use, was—that the same committee should take the king's propositions into consideration. The house went into committee, with instructions to take into consideration, the liberty of the subject in his person, and in his goods, and also the king's supply. The grievances were reduced in the debate that followed, to six heads: 1. Attendance at the council-board; 2. Imprisonment; 3. Confinement; 4. Designation to foreign employment; 5. Martial law; 6. Undue proceedings in matters of judicature.¹

Sir Peter Hayman described to the house the manner in which he was dealt with by the council, and sent to the Palatinate. "I was called before the lords of the council; for what, I knew not; but I heard it was for not lending on a privy seal. I told them, if they will take my estate, let them; I would give it up: lend I would not. They laid to my charge my unwillingness to serve the king. I said I had my life and my estate to serve my country and my religion. They told me that if I did not pay, I should be put upon an employment of service. I was willing. After ten weeks' waiting, they told me I was to go with a lord into the Palatinate, and that I should have employment there, and means befitting. I told them I was a subject, and desired means. Some put on very eagerly, some dealt nobly. They said I must go on my own purse. I told them, *nemo militat suis expensis*. Some told me I *must* go. I began to think, what *must* I. None were ever sent out in that way. Lawyers told me I could not be sent. Having this assurance I demanded means, and was resolved not to stir but upon those terms, and in silence and duty I denied. Upon this, having given me a command to go, after twelve days they told me they would not send me as a soldier, but to attend on an ambassador. I knew that stone would hit me, therefore I settled my troubled estate and addressed myself to that service."²

The debate was continued on the other heads. Confinement was distinguished from imprisonment, as being the

restraint of a subject to his own house or elsewhere. But (it was said) either is an interference with that liberty which is the right of the subject, and of which none can be deprived but by the law of the land. The remedy for regaining the liberty of the person when illegally restrained is the writ of habeas corpus; which was shown in the debates to be coeval with the statutes passed for the liberty of the subject by Edward III., cases having been cited of the use of the writ in that reign; so that the laws which gave liberty of the person were accompanied by a remedy for regaining it when restrained. Mr. Selden, at a conference with the lords, explained the mode of procedure;¹—that the writ of habeas corpus is the highest remedy for him that is imprisoned by the special command of the king, or the lords of the privy council, without showing the cause of commitment; and if any man be imprisoned, by that or any other authority, this writ is to be granted to him, and ought not to be denied. It is directed to the keeper of the prison, in whose custody the prisoner is, commanding him that, after a certain day, he bring in the prisoner, with the cause of his detention, and sometimes with the cause of his caption; and he, with the return, filed to the writ, brings the prisoner to the bar at the time appointed; and the court judges of the sufficiency or insufficiency of the return. If they find him bailable, he is committed to the marshal, the proper officer of the court, and then afterwards delivered to bail. But if it appear to the court that the prisoner ought not to be bailed, nor discharged from the prison whence he is brought, then he is remanded and sent back again to the prison from whence he came, there to continue, till by due course of law he be delivered.

The debate terminated in the following resolutions, unanimously agreed to in a committee of the whole house on the 3rd of April:—

1. That no freeman ought to be committed, or detained in prison, or otherwise restrained by command of the king,

¹ From a speech of Mr. Selden, *Parliamentary History*, vol. vii. p. 417.

or the privy council, or any other; unless some cause of the commitment, detainer, or restraint be expressed, for which, by law, he ought to be committed, detained, or restrained.

2. That the writ of habeas corpus cannot be denied, but ought to be granted to every man that is committed or detained in prison, or otherwise restrained by the command of the king, or the privy council, or any other; he praying the same.

3. That if a freeman be committed or detained in prison, or otherwise restrained by command of the king, privy council, or any other, no cause of such commitment, etc., being expressed; and the same be returned upon an habeas corpus, granted for the said party,—then that he ought to be delivered or bailed.

4. That the ancient and undoubted right of every freeman is, that he hath a full and absolute property in his goods and estate; and that no tax, tallage, loan, benevolence, or other like charge, ought to be commanded or levied by the king or his ministers, without common assent of parliament.¹

The lords, at the request of the commons, appointed a conference, at which the managers of the commons were instructed to endeavour to induce the lords to join in a petition to the king for a confirmation of these resolutions. But before the conference was concluded, the commons, after receiving another message from the king to hasten the supply, came to a unanimous vote that five subsidies should be given to the king. This gave Charles great joy. Mr. Secretary Cook reported to the house the king's acceptance of the subsidies, and the great satisfaction which the vote had given him. But another message, a few days afterwards, urging the completion of the vote by an act, without delay,—in which he cautioned the commons not to bend themselves against the extension of his royal power, but to meddle only with pressures and abuses of power,—gave the commons offence, and they appointed a committee of ten

¹ Parliamentary History, vol. vii. p. 408.

members to consult on their grievances, and to give their substance under several heads, as instructions for their Speaker to deliver them to the king in a speech. In these instructions, besides other matters, it was asserted,—“That it is the ancient right of parliament to dispose of matters there debated, in their own method;—that it is their ancient custom to consider grievances before matters of supply;—that yet, nevertheless, in this parliament, to express our affection to his majesty, contrary to our ordinary proceedings, we have proceeded to supply as far as we could in committee; and, so far from delaying, that, postponing the common and pressing grievances of the nation, we have given precedency to the supply; joining with it only the fundamental and vital liberties of the kingdom that give subsistence to the subject.¹”

The Speaker expounded these principles in a speech to the king, mitigating their rigidity by some considerable flattery. He presented at the same time a petition from the house of commons concerning the billeting of soldiers, denouncing the practice as against the absolute property which every freeman, by the fundamental laws of the realm, had in his goods and estate. The petition pointed out in long detail the mischiefs and exactions arising from the king's subjects' being compelled to receive and lodge soldiers in their houses, and to contribute towards the maintenance of them: the service of Almighty God was greatly hindered, the people in many places not daring to repair to church, lest in the meantime the soldiers should rifle their houses; the government of the country contemned, the officers of justice being resisted and endangered; the rents of the gentry diminished, as the farmers to secure themselves and families from the soldiers' insolence, retired themselves to places of more secure habitation; husbandmen corrupted, tradesmen and artificers discouraged, markets unfrequented; and robberies, rapes, rapines, murders, and barbarous cruelties generally complained of,—of which few have been so much as questioned, and fewer punished.²

¹ Parliamentary History, vol. vii. p. 441.

² *Idem*, p. 446.

These grievances, under the general title of "The Liberty of the Subject," occupied the attention of the house of commons, and through their influence, of the house of lords, almost exclusively of all other business, for two months, when the debates terminated in the celebrated statute or "Petition of Right." The lords held a great debate, at which they required the attendance of the judges of the king's bench, to give reasons for their judgment concerning the writs of habeas corpus;—or, as one of the judges expressed it, "to clear an aspersion of the house of commons that the subject was greatly wounded in their judgment." The judges justified their decision by the return of the writ, "per speciale mandatum domini regis;" certified to them under the hands of eighteen privy councillors. They said, if we had delivered the prisoners presently upon this, it must have been because the king did not show cause, wherein we should have judged the king had done wrong, and that was beyond our knowledge. They added, that although they admitted the force of Magna Charta and the other statutes for securing the liberty of the subject,¹ yet that they never did bail any committed by the king till his pleasure be first known.²

The king tried to avert the further consideration of this matter by the commons, by offering his royal word to observe the liberties of the subject as declared by the ancient statutes. He went on the 28th of April to the house of lords; and sending for the commons, the lord keeper, by order of the king, addressed them, and referred to the expense of time that had been occasioned by the debate in both houses,—in which as they professed that they would not diminish or blemish the king's prerogative, so he presumed that "they would all confess it a point of extraordinary grace and justice in him to suffer it to rest so long in dispute without interruption. But as the debate took more time than the affairs of Christendom could permit, his majesty had thought of an expedient to shorten the business, by

¹ See *ante*, p. 118.

² Parliamentary History, vol. viii. pp. 1-68.

commanding him to let them know that he holds Magna Charta and the other statutes all in force, and that he will govern according to them; and that you shall find as much security in his royal word and promise as in the strength of any law you can make.”¹

The house of commons, not moved by the king's expedient, appointed a committee of lawyers to draw a bill, containing the substance of Magna Charta and the other statutes concerning the liberty of the subject. Another message from the king was delivered by Mr. Secretary Cook, that, “to show clearly that it would not be the king's fault if this be not a happy parliament, he had commanded him to desire the house clearly to let him know whether they would rest on his royal word, which he did assure them should be really and royally performed.” But on his own account, as a privy counsellor, the secretary told the house that he must commit, and neither express the cause to the gaoler nor to the judges, nor to any counsellor in England, except the king himself. Yet (he said) “this power was not unlimited, and was rather a charge and danger; for if by this power he should commit the poorest porter upon what should appear not a just cause, he should suffer a burden heavier than the law could inflict, for he should lose his credit with his majesty and also his place.”²

Before the house had come to any conclusion on that message, the secretary delivered, on the 2nd of May, another message from the king, “that time would not admit of more debate or delay, and that the session of parliament must continue no longer than Tuesday come sevensnight at the furthest; in which time his majesty, for his part, would be ready to perform what he had promised; and if the house were not as ready to do what was fit for themselves, it should be their own faults. It was intimated that, upon

¹ Parliamentary History, vol. viii. p. 81.

² *Idem*, p. 96, taken from Rushworth's Historical Collections. Most of the authorities quoted from the ‘Parliamentary History,’ in this and the next chapter, will be found in Rushworth.

assurance of their good despatch and correspondence, it was his majesty's intention to have another session of parliament at Michaelmas next, for the perfecting of such things as could not then be done. The commons, by their Speaker, answered the several messages, expressing full trust and confidence in the royal word and promise; yet, as there had been public violation of the laws and the subjects' liberties, by some of the king's ministers, they conceived that no less than a public remedy would raise the dejected hearts of his subjects to a cheerful supply of his majesty, or make them receive content in the proceedings of the house. The king answered by the lord keeper that, to show the sincerity of his majesty's intention, he is content that a bill be drawn for a confirmation of Magna Charta, and the other six statutes insisted upon for the subjects' liberties, but so as to be without additions, paraphrases, or explanations.¹

But notwithstanding the permission given for a bill, Mr. Secretary Cook, on the next day, again pressed the house to rely on the king's word as an assurance that bound the king further than the law could. He urged that the debate should take place in the house, and not in a committee of the whole house; but Sir John Elliot replied, "that the proceeding in a committee is more honourable and advantageous both to the king and the house; for that way tends most to truth, as it is a more open way, where every man may add his reasons, and make answer upon the hearing of other men's reasons and arguments." The debate accordingly proceeded in committee; "and the key was brought up, and none were to go out without leave first asked." Sir Edward Coke persuaded the house to proceed by bill. "Was it ever known," said he, "that general words were a sufficient satisfaction to particular grievances? The king's answer is very gracious; but what is the law of the realm? that is the question. I put no diffidence in his majesty; but the king must speak by record, and in particulars, and not in general. Let us put up a petition of right; not that I dis-

¹ Parliamentary History, vol. viii. pp. 94-103.

trust the king, but that I cannot take his trust but in a parliamentary way.”¹

The commons having finished the petition, desired a conference with the lords, which was held on the 8th of May. The managers of the commons stated that they had drawn up a petition of right, according to ancient precedents, and left space for the lords to join therein with them. The lords referred the petition to a select committee; but their proceedings were suspended by a letter from the king, sealed with the royal signet, and delivered by the Duke of Buckingham. Referring to the leave he had given for debate on the highest points of royal prerogative,—which none of his predecessors would have permitted,—he found it still insisted upon, notwithstanding his several messages, that neither he nor his privy council have power to commit any man without cause shown; whereas it often happened that, should the cause be shown, the service itself would thereby be destroyed and defeated. He informed the lords that, without the overthrow of his sovereignty, he could not suffer that power to be impeached: but he declared that neither he nor his privy council, should or would commit or command to prison, or otherwise restrain the person of any man for not lending money to him, nor for any other cause which, in his conscience, did not concern the public good of himself and his people; that he would not be drawn to pretend any cause, wherein his judgment and conscience were not satisfied; and that, in all cases, upon the humble petition of the party, or address of the judges to him, he would readily and really express the true cause of their commitment or restraint, so soon as, with convenience and safety, the same was fit to be disclosed and expressed. This he thought fit to signify, to shorten any long debate upon this great question.²

The king's letter impressed the house of lords with a desire to render the petition acceptable to him. They prepared a saving clause of the king's sovereign power,—“to

leave entire the sovereign power of the king,"—which, in a conference, the commons rejected. The king also interposed messages to the lords, urging a speedy decision; but at length, on the 26th of May, the lords, after several conferences with the commons, agreed to the petition as prepared by them, with a few verbal alterations. They contented themselves with a declaration, by their own house alone, to the king, that their intention was not to lessen or impeach anything which by the oath of supremacy, they had sworn to assist and defend. The petition was delivered, on the 28th of May, by the lord keeper to the king, in the presence of both houses, and it was requested that his majesty would please to give his assent to it in full parliament.¹

This great constitutional statute is in substance as follows:²—It is the petition of the lords spiritual and temporal and commons, in parliament assembled, and is addressed to the king. It begins by,—

1. Reciting the ancient laws against taxation without consent of parliament;³—it declares that, notwithstanding such laws, commissions have issued, by means of which the people have been assembled, and required to lend money to your majesty; and many, upon their refusal, have had an oath administered to them, not warrantable by the laws and statutes, and have been constrained to become bound to make appearance, and to give attendance before your privy council, and in other places; and others have been imprisoned, confined, and sundry other ways molested and disquieted. Divers other charges have been laid and levied on the people, in several counties, by lord-lieutenants, deputy-lieutenants, commissioners for musters, justices of peace and others,

¹ Parliamentary History, vol. viii. pp. 114–142.

² 3 Charles I., cap. 1. It is entitled, "The Petition exhibited to His Majesty, by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal Answer thereunto, in full Parliament."

³ See these *ante*, p. 121.

by command or direction from your majesty, or your privy council, against the laws and customs of the realm.

2. Reciting the ancient laws for securing the liberty of the subject,¹ the petition declares that against the tenour of such laws, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices, by writs of habeas corpus, there to undergo and receive as the court should order,—and their keepers commanded to certify the causes of their detainer,—no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council; and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

3. Great companies of soldiers and mariners (it declares) have of late been dispersed into divers counties; and the inhabitants, against their wills, have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of the realm, and to the great grievance and vexation of the people.

4. Reciting Magna Charta and the ancient statutes, that no man should be tried, or be adjudged to death, but by the law of the realm, it declares that of late commissions, under your majesty's great seal, have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to proceed, within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit murder, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever; and by such summary course and order as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and to cause them to be executed and put to death, according to the martial law. By pretext whereof some of your majesty's subjects have been put to death, when, if they deserved death, they ought

¹ See *ante*, p. 118.

by the statutes of the land, and by no other, to have been adjudged and executed; and other grievous offenders have escaped the punishment due to them by the laws of the realm, by reason that your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the laws of the realm, upon pretence that the offenders were punishable only by martial law, and by authority of the commissions; which commissions, and all others of a like nature, are directly contrary to the laws and statutes of your realm.

1. The petitioners prayed that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or refusal thereof.

2. That no freeman, in any such manner as is before mentioned, be imprisoned or detained.

3. That your majesty would be pleased to remove the soldiers and mariners, and that your people may not be so burdened in time to come.

4. That the commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed, or put to death, contrary to the laws and franchise of the land.

All which they most humbly pray of your most excellent majesty as their rights and liberties, according to the laws and statutes of this realm:—and that your majesty would also vouchsafe to declare that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure—that in the things

aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your majesty, and the prosperity of this kingdom.

The king attended in the house of lords, on the 2nd of June, to give his royal assent to the petition, in the presence of the lords and commons. It was read over by the clerk; but instead of adopting the ancient form of the royal assent,—“*Soit droit fait come est desire*,”—the king made the following answer:—

“The king willeth, that right be done according to the laws and customs of the realm; and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just rights and liberties; to the preservation whereof he holds himself, in conscience as well obliged, as of his own prerogative.”

On the return of the commons to their house, the king's answer was read, and dissatisfaction was expressed at the departure from the legal form. But the consideration of it was postponed, for another matter had arisen, more absorbing even than that of the liberty of the subject. The Church sympathized with the king in his struggle concerning his prerogative; and the pulpit had been used to intimidate the people, by the terrors of Divine punishment, from resisting the demands of the king. Amongst these clerical politicians, Dr. Mainwaring had become conspicuous. He had preached two sermons before the king, and a third in his parish church, and these he afterwards published in a book, entitled ‘*Religion and Allegiance*.’ In these he maintained that the king's royal command imposing taxes and loans, without consent of parliament, did so far bind the conscience of the subjects of the kingdom that they could not refuse the payment without peril of damnation. He enforced as a principle that the authority of parliament was not necessary for the raising of aids and subsidies.

Preaching so defiant, and so opposed to the principles

which the commons were enforcing, could not be overlooked; and the commons prepared charges against Mainwaring, which they presented to the house of lords, and called upon that house to make full inquiry, and bring him to justice. The king tried to avert the commons' proceedings by repeated messages to lords and commons, promising a faithful adherence to the Petition of Right, notwithstanding the irregularity of form in the assent, but finally intimating his intention to close the session on the 11th of the month; "and because that could not be, if the house entertain more business of length, he required of them not to enter or proceed with any new business which might spend greater time, or which might lay any scandal or aspersion on the state, government, or ministers thereof."¹

This message produced a debate, and a scene in the house of commons that should not be lost sight of in our constitutional history. A restriction upon their liberties so important as one prohibiting them from censuring the king's ministers, could not be passed over in such a parliament. A debate was opened, in which Sir John Elliot was the second speaker. He commented on that part of the message, "that they were not to enter on any business which might lay some aspersions on the government." "It is said also," he proceeded, "as if we cast some aspersions on his majesty's ministers. I am confident no minister, how dear soever, can"—

Here the Speaker started up from the chair, and supposing that Sir John Elliot intended to censure the Duke of Buckingham, he said, "There is a command laid upon me to interrupt any that should go about to lay an aspersion upon the ministers of state." A deep silence followed;—the Speaker desired leave to go forth for half an hour; and the house ordered that he might go forth, if he pleased.

The house, in his absence, resolved itself into committee. The first member who spoke was in consternation; he said, "That for the speaker to desire to leave the house in such a

¹ Parliamentary History, vol. viii. pp. 150–190.

manner was never heard of before, and he feared would be ominous." The next said there were two ways of proceeding: to go to the lords, or to the king. He thought, "the latter our proper course, as it doth concern our liberties; and let us not fear to make a remonstrance of our rights." Sir Edward Coke, after quoting several ancient instances of the interference of parliament with kings' ministers, said, "I think the Duke of Buckingham is the cause of all our miseries, and, till the king be informed thereof, we shall never go out with honour, or sit with honour here. As for going to the lords, that is not *via regia*; our liberties are now impeached; we are deeply concerned. It is not *via regia*, for the lords are not participant in our liberties. It is not the king, but the duke that saith, 'We require you not to meddle with state government, or the ministers thereof.' " Several members attributed these evils to the prevalence and permission allowed to popery, and "because those that use the king's power seek an utter subversion of our religion." Another said, "It is not the Duke of Buckingham alone that is the cause of the evils, but there are other great persons worthy of blame;" to which it was replied, "Take away the great one, and the rest will vanish." Many found excuse for the king, saying, "It is not King Charles counselling himself, but ill counsel followed that is given him by ill counsellors." The house was preparing to put the question, "That the Duke of Buckingham shall be instanced to be the chief and principal cause of all their evils," when the Speaker returned with a message from the king, to whom he went when he left the chair,—“That his majesty commands, for the present, they adjourn the house till tomorrow morning, and all committees cease in the meantime,”—and the Speaker adjourned the house accordingly.¹

The king did not maintain the absolute position which had produced this scene. He sent, on the 6th of June, a message to the commons, that he had no meaning of barring them of their just right, but only to avoid all scandals on his

¹ Parliamentary History, vol. viii. pp. 190–196.

past counsel and actions ; and that his ministers might not be, nor himself, under their names, taxed for their counsel to him. The Speaker confessed that, when he left the house with its permission, he went to the king ; and he confirmed the latter message, stating, that, "It bars you not of your right in matter ; nay, not in manner." The commons, for the present, accepted the explanation as satisfactory.

The commons had now leisure to consider the king's evasive answer to the Petition of Right. At a conference with the lords, held on the 7th of June, both houses agreed to address the king, "that he would please to give a clear and satisfactory answer, in full parliament, to the petition." The message having been communicated to the king, he appointed that day, at four in the afternoon, when he came to the house of lords ; and the Speaker, with the commons, being in attendance, the king commanded the clerk of the parliament to cut out his former answer entered in the journal, and he, at the same time, gave him another. After a speech from the lord keeper, requesting a more clear signification of the royal assent, the king made a short speech, defending his former assent as sufficient, but concluding with, "Read your petition, and you shall have an answer that I am sure will please you." The petition having been read, the clerk gave the king's assent,—"*Soit droit fait comme il est désiré*,"—"Let right be done as is desired,"—and the petition then became, in form and substance, an act of parliament.

It is recorded in the lords' journals that, at the conclusion of the business, the commons gave a great and joyful applause ; and other authorities mention that they returned to their house with unspeakable joy, and resolved so to proceed as to express their thankfulness. The king added to the general satisfaction, by sending a message to the commons,—in anticipation of a request they were about to make,—consenting that the petition, and his answer, should be recorded in the courts of Westminster, as well as the houses of parliament.

The commons gave proof of the conciliatory effect of these

proceedings by passing a bill granting five subsidies to the king. Sir Edward Coke carried it to the lords, accompanied by almost the whole house. The lords took exception to the form of the bill, that the commons alone were named in the preamble. Several conferences took place, but the commons evaded any alteration; and from this time settled the custom of making money-bills, in form as well as procedure, a grant from the commons alone.

The king had announced his intention to prorogue the parliament on an early day, and several important affairs were brought under consideration in the interval, which require our notice.

The impeachment of Dr. Mainwaring was brought to a conclusion by the lords, who passed sentence upon him,—that he should be imprisoned during the pleasure of the house, be fined £1,000 to the king, should make submission at the bar of both houses, that he should be suspended for three years from the ministry, should be disabled from ever preaching at court, or holding any ecclesiastical dignity or secular office, and that all the offending books should be called in by proclamation and burnt. He acknowledged his fault, and made submission on his knees, at the bar of the commons, being led into the house by the warden of the Fleet Prison, to which he was committed.¹

The commons complained of a commission of excise which the king had issued, appointing thirty-three of his counselors to advise him how to raise money for the war,—“the same to be done by impositions or otherwise, as in your wisdoms and best judgments ye shall find to be most convenient in a case of this inevitable necessity, wherein form and circumstance must be dispensed with, rather than the substance be lost or hazarded.”² After a conference with the commons, the lords appointed a special committee to draw up a message to advise the king to cancel the commission. The commons sent to the lord keeper for the com-

¹ Parliamentary History, vol. viii. p. 211.

² See Commission, Parliamentary History, vol. viii. p. 214.

mission, which was sent, and read to the house. This business terminated in the lord-president of the council acquainting the lords that the king had caused the commission to be cancelled in his presence. His lordship showed the cancelled commission to the house, and it was sent, with a message, to the commons for their inspection.

The commons resumed the debate, which had been interrupted by the king's message, to declare the Duke of Buckingham the cause of the evils and grievances of the nation. It terminated in a remonstrance, which the commons drew up, to be delivered to the king. It expressed "their fear of the subversion of religion, through the increase of papists, and the daily growth and spreading of the faction of the Arminians,—a cunning way to bring in popery,—and much favoured, even by the clergy near to your majesty, especially Dr. Neile, Bishop of Winchester, and Dr. Laud, Bishop of Bath and Wells, who are justly suspected to be unsound in their opinions that way." They then go through, in detail, all the disasters of the war, refer to the impoverished state of the nation, the not guarding the narrow seas, whereby the trade of the kingdom, the shipping and mariners, will be utterly lost; and they conclude with the resolution, that "the principal cause of which evils and dangers we conceive to be the excessive power of the Duke of Buckingham, and the abuse of that power. And we humbly submit to your majesty's wisdom, whether it be safe for yourself or your kingdoms, that so great power as rests in him by sea and land, should be in the hands of any one subject whatever."

A message was sent to the king, desiring access to his person, with the remonstrance, and the Speaker was appointed to deliver it. He desired to be excused, but the house obliged him to comply, and the remonstrance was delivered.¹

The king had announced, in order to hasten the despatch of business, that parliament would be prorogued on the 26th of June. Tonnage and poundage had not yet been granted

¹ Parliamentary History, vol. viii. p. 219.

to him, although he appears to have expected that an act, granting the duties for his life, would follow his assent to the Petition of Right. The commons, however, proceeded to prepare a "remonstrance," to explain why the duties had not been granted to him before; and why it was necessary still to postpone the grant. They desired a previous admission from the king, that the duties were not leviable by virtue of his prerogative, but of the voluntary grant of parliament; and they attributed to the illegal conduct of King James, in raising the duties above the legal rates, and to Charles's collection of the same illegal rates, the delay which had occurred. They declared that the collection of the duties by Charles, without the authority of parliament, was a fundamental breach of the liberties of the kingdom, and contrary to his answer to the Petition of Right; and they besought him to forbear further receiving them, and not to take it in ill part from those of his subjects who should refuse to make payment without warrant of law.¹

The king being informed of these proceedings, and alarmed for his tonnage and poundage, hurried to the house of lords, on the day fixed for the prorogation, several hours earlier than he was expected, and prevented the presentation of the remonstrance by proroguing the parliament. In his speech he said, "It may seem strange that I come so suddenly to end this session, therefore I will tell you the cause, though I owe the account of my actions to God alone. A while ago, the house of commons gave me a remonstrance,—how acceptable every man may judge. Now I am well informed that a second remonstrance is preparing for me, to take away the profit of my tonnage and poundage, by alleging that I have given away my right thereto, by my answer to your petition. This is so prejudicial to me, that I am forced to end this session some few hours before I meant, being not willing to receive any more remonstrances, to which I must give a harsh answer. To prevent false constructions of what I have granted in your petition, I declare that I have

¹ Parliamentary History, vol. viii. p. 237.

granted no new, but only confirmed the ancient liberties of my subjects. . . . But, as for tonnage and poundage, it is a thing I cannot want, and was never intended by you to ask, nor meant by me, I am sure, to grant."

The speech was ordered by the king to be entered on the commons' journals. The Bill of Subsidy was presented by the Speaker, with the remark "that it was the greatest gift that ever was given in so short a time." The royal assent was given to that and some other bills, and the parliament was prorogued to the 20th of October.¹

If we should be inclined to deem it hard measure dealt to Charles by the commons, to postpone the grant of tonnage and poundage, and to hold him bound by his assent to the Petition of Right to discontinue the levying of it until granted, we must not overlook the fact that the Petition of Right was merely declaratory of the ancient laws at the time existing and in force, and that it did not take away the true legal prerogative of the crown. The assent given to it by the king with such marked deliberation was binding upon him, even on the principles of divine right; and Charles would have best secured his own happiness, as well as the love and content of his people, if he had resolved to adhere to the principle of the law, and had shaped his general policy in unison with it. But when he had prorogued the parliament, he took various steps in opposition even to his own construction of the law, and which widened the breach between him and the commons.²

He complied with the sentence of the house of lords

¹ Parliamentary History, vol. viii. p. 241. "Thus ended this eventful session, one of the most memorable in history. The patriots may have been occasionally intemperate in their warmth, and extravagant in their predictions; but their labours have entitled them to the gratitude of posterity." (Dr. Lingard's History of England, vol. vii. p. 334.)

² "By ratifying that law, Charles bound himself never again to raise money without the consent of the houses; never again to imprison any person, except in due course of law; and never again to subject his people to the jurisdiction of courts-martial." (Macaulay's History of England, vol. i. p. 84.)

against Mainwaring, so far as to issue a proclamation to call in the sermons; but he pardoned him, remitted his fines, and gave him an additional living; and some time afterwards he raised him to a bishopric. He also pardoned Dr. Montagu, another clergyman who had been censured by parliament; and Dr. Laud was translated from St. David's to London. On the other hand, one of the great differences between him and the commons was removed. The Duke of Buckingham was assassinated at Portsmouth, by one Felton, an officer, who, previously to the assassination, sewed a paper within his hat, avowing that it was the parliament's remonstrance against the duke that had induced him to take him off as an enemy to the country. Buckingham was at the time engaged at Portsmouth in preparing a new expedition for the relief of the Protestants of Rochelle. In consequence of his death, the expedition was committed to the conduct of the Earl of Lindsay. But it ended as unfortunately as the former expedition conducted by Buckingham. It was forced to surrender to the Catholic troops of Louis XIII., who entered the town on the 18th of October, and compelled the Protestants to submission.

Parliament was again prorogued from the 20th of October to the 20th of January, on which day it assembled, and the commons immediately reconstituted committees for privileges, religion, courts of justice, grievances, and trade. A case of extraordinary meanness on the part of the crown, was communicated to the house of commons by Sir John Elliot;—that the Petition of Right had been printed by the government for circulation amongst the people, with the first and repudiated answer appended to it, instead of the substituted legal answer. Mr. Selden reminded the house how the Petition of Right had been violated since their last meeting,—that the goods of Mr. Rolles, a member of the house, had been seized by the crown for the duties of tonnage; and that the court of exchequer had made an order commanding the sheriff not to execute a writ of replevin, issued with the view of trying the legality of the seizure,

and restoring the goods in the meantime. He also referred with indignation to the case of Mr. Prynne, who had been deprived of his ears by sentence of the star-chamber.

The commons proceeded to examine into the circumstances of the printing of the Petition of Right. It was found that the king's printers had been furnished by the clerk of the house of lords with the original Petition of Right, with the king's second and legal answer to it; and that during the sitting of parliament they had printed about 1,500 copies, of which few were circulated;—that on the day after the session was ended, the attorney-general sent for the printer to his chambers, and told him, as by his majesty's own command, that these should not be published, and that he must print the petition with the *first* answer. For that purpose the Lord Privy Seal and Mr. Attorney delivered the printer the necessary papers, with a command indorsed to print them.¹ It seems unaccountable that an artifice in itself so mean, and certain of speedy exposure, should have been resorted to.

The house entered upon the complaint of Mr. Rolles, of the seizure of his goods for tonnage. Before the debate had proceeded far, a message was received from the king that he would speak with both houses on the following day (the 23rd of January), in the banqueting-house at Whitehall. The king there addressed them as follows:—"The complaint," said the king, "is for staying of men's goods that deny tonnage and poundage. This may have an easy and short conclusion if my words and actions be rightly understood; for, by passing the bill as my ancestors have had it, my past actions will be concluded, and my future proceedings authorized; which certainly would not have been stricken upon if men had not imagined that I had taken those duties as appertaining to my hereditary prerogative, in which they are much deceived; for it ever was, and still is my meaning, by the gift of my people to enjoy it; and my intention, in my speech at the end of the last session, was not to chal-

¹ Parliamentary History, vol. viii. pp. 245-256.

lenge tonnage and poundage as of right, but *de bene esse* (provisionally); showing you the necessity, not the right, by which I was to take it, until you had granted it to me; assuring myself, according to your general professions, that you wanted time, and not goodwill, to give it me. Wherefore, having now opportunity, I expect that without loss of time you make good your former professions; and so, by passing the bill, put an end to all questions arising upon this subject, especially since I have removed the only scruple that can trouble you on this business.”¹

It was now evident that the king was prepared to relinquish his claim of hereditary right to tonnage and poundage if he could obtain a parliamentary grant; and although he professed to have made a similar announcement in his speech at the end of last session, nothing could be more opposite than the speeches when compared. This speech was followed by a bill, which Mr. Secretary Cooke brought in for a grant of tonnage and poundage, and which he endeavoured to induce the house to take into consideration. But they gave priority to “God’s business,” and the necessity of suppressing Popery and Arminianism; the professors of the former being the open enemies, of the latter the subtle and dangerous underminers of the true religion established in the realm. The king pressed for priority of tonnage and poundage, in successive messages, again saying:—“I do not so much desire it of greediness of the thing, being persuaded that you will make no great stop in it, when you once take it in hand, as out of a desire to put an end to those questions that do daily arise between me and some of my subjects; thinking it a strange thing if you should give ear to those complaints, and not to take the sure and speedy way to decide them.”²

The king would have put the commons completely in the wrong by these fair speeches and propositions if he had at the same time abstained from enforcing the ungranted duties. But whilst addressing the commons, his officers were at the

¹ Parliamentary History, vol. viii. p. 256. ² *Idem*, vol. viii. p. 277.

same time proceeding against some of the members. The house was irritated by an announcement from Mr. Rolles that "since the last complaint of the breach of the liberties of the house, his warehouse was locked up by one Massey, a pursuivant; and that yesterday he was called forth from the committee in the exchequer-chamber, and served with a subpoena to appear in the star-chamber." Although Mr. Rolles announced at the same time that he had since received a letter from Mr. Attorney that it was a mistake, the house would not receive the explanation. "You see," said a member, "we are made the subject of scorn and contempt. I conceive this to be a bone thrown in by them who seek to draw a cloud over our religion, to divert or interrupt us in preservation of it." One of the king's ministers assured the house that the matter proceeded from some great error—"this never proceeded from the king or council." But Mr. Selden answered, "This is not to be reckoned as an error, for questionless this is purposely to affront us, and our own lenity is the cause of this." The house ordered that the messenger who served the subpoena should be summoned to attend the house, and it appointed a committee to see and examine the information in the star-chamber, and to ascertain by whom the same was put in.¹

The proceedings of the committee of religion we have generally passed over, but we must notice the first appearance on the scene of Oliver Cromwell, in a very characteristic speech. He said, that he heard by relation from one Dr. Beard, that Dr. Alabaster had preached flat popery at St. Paul's Cross; and that the Bishop of Winchester (Dr. Neile) commanded him, as he was his diocesan, he should preach nothing to the contrary.²

The house took very decided measures in opposition to the king's proceedings to recover tonnage and poundage from the merchants. They committed the sheriff of London to the Tower for "variation and contradiction in his examination," which was declared a contempt of the house; and

¹ Parliamentary History, vol. viii. pp. 281-286.

² *Idem*, p. 289.

detained him there three days, when he made his submission on his knees at the bar. They sent a message to the court of exchequer, that the injunction of that court by which the goods had been stayed for duties, was founded on a false affidavit, and desired that the court would make void the orders and affidavits. The court sent an answer that the owners of the goods endeavoured to take their goods out of the king's actual possession by writs of replevin, which was no lawful action or course in the king's cause, nor agreeable to his prerogative; therefore the court stayed those suits, but did also declare that the owners, if they conceived themselves wronged, might take such remedy as the law allowed.

Frustrated in their attempt on the court of exchequer, the commons proceeded to examine the customers (custom-house officers) as to their knowledge that the goods they had taken from Mr. Rolles belonged to a parliament-man, with the view of founding upon it a breach of privilege. One of the customers admitted that he knew Mr. Rolles to be a parliament-man, but he understood that the privilege extended only to his person, and not to his goods. They all justified their proceedings on the warrant of the king, which reciting "that tonnage and poundage is a principal revenue of our crown, and hath continued for many ages," ordered the duties to be levied and collected as in the time of his father, and that the lords of the council and the treasurer should commit to prison all who refused to pay, until they conformed themselves. The house entered into a long debate on the question of privilege, in which doubt was raised whether it existed during prorogation. The grand committee reported that a member of the house ought to have privilege of person and goods: they did not decide whether it was superseded by the king's warrant, but added that the command of his majesty is so great that they leave it to the house.

The commons adjourned without any decision, but they met on the 25th of February, when another scene of interest

and excitement was presented. The house proceeded to consider the articles to be insisted and agreed upon at a sub-committee for religion. The debate was interrupted by a message from the king, which the speaker announced,—commanding him to adjourn the house “until Tuesday come seven-night following.” It was objected, “that it was not the office of the Speaker to deliver any such command; for the adjournment of the house did properly belong unto themselves; and after they had settled some things they thought convenient to be spoken of, they would satisfy the king. Sir John Elliot offered a remonstrance which he had prepared, addressed to the king, beseeching him to forbear any further recovery of tonnage and poundage; but the Speaker and the clerk refused to read it to the house; and on the former being asked to put the question to the house, whether the remonstrance should be adopted, the Speaker said “he was commanded otherwise by the king.” “If you will not put the question (said Mr. Selden) which we command you, we must sit still; and so we shall never be able to do anything. We sit here by command from the king, under the great seal; and as for you, you are by his majesty sitting in his royal chair before both houses, appointed our Speaker. And do you now refuse to be a Speaker?” The Speaker justified his refusal by an express command from the king to rise as soon as he had delivered his message. He rose and left the chair, but was drawn into it again by Holles and Valentine and others of the puritan party, who, after a struggle with the court party, succeeded in maintaining him there, although he appealed to them with abundance of tears, saying, “I will not say, I will not; but, I dare not.” He was held in the chair amidst the scorn and derision of the puritan members, who, foreseeing that a dissolution would follow this outbreak, passed a protestation, hastily prepared by Mr. Holles, in the following words:—

“1. Whoever shall bring an innovation in religion, or by favour seek to extend or introduce Popery, or Arminianism, or other opinions disagreeing from the true and orthodox

church, shall be reported a capital enemy to this kingdom and commonwealth.

“2. Whoever shall counsel or advise the taking and levying of the subsidies of tonnage and poundage, not being granted by parliament; or shall be an actor or instrument therein, shall be likewise reported an innovator on the government, and a capital enemy to this kingdom and commonwealth.

“3. If any merchant, or other person whatsoever, shall voluntarily yield or pay the said subsidies of tonnage and poundage, not being granted by parliament; he shall, likewise, be reputed a betrayer of the liberty of England, and an enemy to the same.”

When the protestation had been read and agreed to, the house rose, having protracted their sitting about two hours. In the meantime the king, hearing that their sitting was continued in disregard of his command for adjournment, endeavoured to remove them. He first sent a messenger for the serjeant with his mace,—that by removing it from the table an end might be put to the sitting. But the serjeant was detained, and the key of the door taken from him, and given to a member to keep. The king next sent the usher of the black rod, as for a dissolution; but being informed that neither the usher nor his message would be received, he became enraged, and sent the captain of the pensioners, with his guard, with orders to force open the door. But before that extreme step could be taken, the house had risen and adjourned to the 10th of March.¹

The king was now roused to violent action: he published a proclamation, signifying his intention to dissolve the parliament, on account of the disobedient and seditious carriage of ill-affected persons of the house of commons; and he entered upon a course of relentless persecution of the unfortunate patriots. Without waiting for the actual dissolution, Sir John Elliot, Selden, Holles, Stodart, Hayman,

¹ Parliamentary History, vol. viii. p. 330. Lingard's History of England, vol. vii. p. 347.

Coriton, Long, Valentine, and Stroud, were summoned before the privy council; and after having been questioned as to the parts they had respectively taken in preventing the Speaker adjourning the house, according to the king's command, they were committed to prison. The king's speech, when dissolving the parliament, manifested his anger and intemperance. He addressed the lords only, although many of the commons were at the bar. He never came there, he said, "on so unpleasing an occasion, it being for the dissolution of the parliament. Many may wonder why I did not rather choose to do this by commission, it being a general maxim of kings to lay harsh commands by their ministers, themselves only executing pleasing things. But I thought it necessary to come here this day to declare to you, my lords, and all the world, that it was only the disobedient carriage of the lower house that hath caused this dissolution at this time; and that you, my lords, are far from the causers of it. Nor do I lay the fault equally upon all the lower house; for as I know there are many dutiful and loyal subjects there, so I know that it was only some vipers amongst them that had cast this mist of difference before their eyes."¹

This was the third parliament that the king had dissolved in anger within only four years. We may not hesitate to consider these dissolutions impolitic and abrupt, if Clarendon, the historian and apologist of Charles, has so viewed them. "The abrupt and unkind breaking off," says Lord Clarendon, "the two first parliaments, was wholly imputed to the Duke of Buckingham, and of the third, principally to the Lord Weston, then lord high treasurer of England. . . . No man," he observes, "can show me a source from whence those waters of bitterness, afterwards tasted, more probably flowed than from these unreasonable, unskilful, and precipitate dissolutions, in which, by an unjust survey of the passion, insolence, and ambition of particular persons, the court measured the temper and affection of the country; and, by the same standard, the people considered

¹ Parliamentary History, vol. viii. p. 333.

the honour, justice, and piety of the court ; and so usually parted, at those sad seasons, with no other respect and charity one towards the other, than accompanies persons who never meant to meet but in their own defence. In which the king had always the disadvantage to harbour persons about him, who, with their utmost industry, false information, and malice, improved the faults and infirmities of the court to the people ; and, again, as much as in them lay, rendered the people suspected, if not odious to the king.”¹

¹ Clarendon's History of the Rebellion, vol. i. pp. 4, 5.

CHAPTER XVI.

CHARLES I.

FROM THE DISSOLUTION OF THE THIRD PARLIAMENT OF CHARLES I., AND DURING THE INTERVAL OF TWELVE YEARS WITHOUT A PARLIAMENT, THROUGH HIS FOURTH PARLIAMENT, AND PART OF THE FIFTH OR LONG PARLIAMENT, TO THE COMMENCEMENT OF THE CIVIL WAR.

Royal Proclamation putting down Parliament.—Its Effect.—Proceedings against the Members.—Some of the Popular Party accept Office.—The King's Proceedings to raise Money.—Knighthood.—Ancient Forest Laws.—Ship-money.—Nature of the Writs.—Judges' Extra-judicial Opinion.—Hampden's Resistance.—His Case argued, and Judgment against him.—Exactions of the Council and Star-chamber.—Disturbance with Scotland.—An Army marched to Scotland, Negotiations, and the English Army disbanded.—King's Necessities oblige him to call a Parliament.—Fourth Parliament, 1640.—Long Parliament.—The Royal Speech.—Committees for Grievances appointed.—Debate on Grievances.—Lords punish the Clerk of the Privy Council.—Impeachment of Earl of Strafford.—Of Sir Francis Windebanke.—Convocation condemned.—Ship-money.—Resolutions condemning Ship-money.—Monopolists expelled.—Impeachments.—Assistance voted to the Scotch.—Petition against Bishops.—Royal Speech.—Some Puritan Leaders accept Office under the King.—Rapid Descent of Executive Power.—Judges' Appointments during Good Behaviour.—Triennial Act passed.—Act for Relief of the Army.—The Parliament made Indissoluble.—Tonnage and Poundage granted for Two Months.—Acts abolishing Star-chamber and High Commission Courts.—Royal Speech.—Acts abolishing Ship-money.—For Certainty of the Forests.—Concerning Knighthood.—Effect of the Legislation.—King's Absence in Scotland, and Popularity on his Return.—The Grand Remonstrance.—Delivered to the King.—Analysis of it.—Attempt to Estimate it.—King charged by Parliament with Breach of Privilege.—Attempted Seizure of the five Members.—Lord Falkland and others become the King's Minis-

ters.—Charge against the five Members.—The Sergeant-at-Arms demands them.—King goes to the House of Commons to demand them.—Voted a Breach of Privilege.—Pym's Speech in Answer to the Charge.—The King pursues the Members into the City.—The King quits London.—He withdraws his Charge against the five Members, and tries to reconcile Parliament.—Royal Assent to Bills for Tonnage and Poundage.—For removing Temporal Power of the Clergy.—He refuses Assent to Militia Ordinances.—Repetition of the Parliamentary Demands.—The King's Speech on Refusal.—Review of the Impending Contest.—Civil War commenced.

CHARLES followed up the dissolution of his third parliament, by publishing a declaration of the causes which moved him to dissolve it; and shortly afterwards, by a proclamation of unparalleled daring, in which he asserted absolute power over the parliament and people. Referring to rumours spread by ill-disposed persons, he thought it expedient to make known his royal pleasure, that he did not purpose to overcharge his subjects by any new burden, but to satisfy himself with the duties received by his father, which he neither could nor would dispense with. And as to false rumours that he was about again to call a parliament, he said, that although he had showed, by his frequent meeting with his people, his love to the use of parliaments, yet the late abuse having, for the present, driven him out of that course, he should account it presumption for any to prescribe any time to him for parliaments: the calling, continuing, and dissolving them being always in the king's own power. He should be more inclinable to meet a parliament again, when his people should see more clearly into his intents and actions; when such as had bred this interruption should receive their condign punishment; and those that were misled by them and such ill reports, should come to a better understanding of him and themselves.¹

Such a proclamation could only have been issued by a king conscious of his power and resolved to use it; and could only have been received with silent acquiescence by a people who acknowledged that power and their inability to

¹ Parliamentary History, vol. viii. p. 391.

resist it. The imprisoned patriots, who had led the house of commons, could no longer stimulate the people nor resist the royal aggressions, whilst their imprisonment operated as a terror to those who were inclined to follow a patriotic course. The subservience of the judges prevented any hope of stemming the king's will in the courts of law; and the parliament,—the only arena for free discussion,—was now denounced as a guilty institution, not to be called together again until it had learnt the lesson of submission.

The proceedings against the members were continued with great oppression. The judges were questioned by the attorney-general, for the purpose of obtaining their private opinions as to the penal liability of the members in the courts of law, for their conduct in the house of commons. Informations were instituted against some of them in the star-chamber; and against Sir John Elliot, Denzil Holles, and Benjamin Valentine, in the king's bench. Writs of habeas corpus having been issued to bring up the latter from the prison of the king's bench, they were, by the king's order, and to elude the judgment of the court, transferred to the Tower. They remained there through the long vacation, until November; and being then brought up to the king's bench, the judges, having previously conferred with the king, pronounced judgment that they ought to be bailed upon giving security for their good behaviour. A decision so contrary to the spirit and purpose of the writ of habeas corpus, and which implied a confession of culpability without trial, could not be submitted to; and the prisoners demanded to be bailed in point of right, and if not of right, they did not demand it. They were remanded to the Tower, and were required to plead to the information. They demurred to the jurisdiction of the court, as being incompetent to try supposed offences done in parliament; but the demurrer was over-ruled, and the prisoners persisting in their refusal to plead, sentence was pronounced against them. They were ordered to be imprisoned during the king's pleasure; and not to be delivered until each gave security for his good be-

haviour and made submission and acknowledgment of his offence. Sir John Elliot, inasmuch as the court thought him the ringleader, was fined £2,000; Mr. Holles, 1,000 marks; and Mr. Valentine, £500. These patriotic men preferred imprisonment to the dishonour of acknowledging their conduct in parliament to be an offence against the law; and Sir John Elliot died in prison.¹

It must now have appeared hopeless to contend against the power of the king; and some, whose patriotism seemed to promise no reward, were gained over to his service, and accepted office under him. Sir Dudley Digges was made master of the rolls, Mr. Noy, attorney-general, and Mr. Littleton, solicitor-general. Sir Thomas Wentworth, with the allurements of a peerage and the presidentship of the council in the north, left the popular party and became one of the most subservient of the ministers of the king. But from that time he especially was pursued by the implacable hatred of the puritan party.

The king further strengthened his position by making peace with France, and afterwards with Spain; and Lord Clarendon informs us, that "there quickly followed so excellent a composure throughout the whole kingdom, that the like peace and plenty and universal tranquillity, for ten years, was never enjoyed by any nation."² But all the principles of the constitution,—the laws relating to taxation, and even the king's proclamation that he would not overcharge his subjects with any new burdens,—were disregarded. Tonnage and poundage were collected by order of the king's council, new and greater impositions were laid on trade, obsolete laws were revived and vigorously executed. The ancient prerogative enjoyed by the crown of compelling its tenants *in capite* to take upon them the order of knight-hood was revived. That prerogative had been restrained by a statute of Edward II.,³ which provided that persons not

¹ Parliamentary History, vol. viii. pp. 372-389.

² Clarendon's History, vol. i. p. 67.

³ 1 Edward II., stat. 1, A statute for Knights. The sum was pro-

having £20 yearly in fee, or for life, or who were under age, or who held their lands by socage or burgage tenure, or who were in holy orders, should not be distrained to take knighthood; and in cases where the obligation could not legally be resisted, the parties were excused if of great age, or if suffering from bodily injury or incurable disease, or if burdened by the charge of their children, or by suits, on payment of a reasonable fine. But now, proclamations were made in every county, summoning all men of full age, seised of lands or rents of the annual value of £40 or more, not being knights, to appear personally in the king's presence, before a certain day, to receive the order and dignity of knighthood. If they made default, process by distringas was issued against them out of the court of exchequer, and many were put to grievous fines and vexations. Thus "the king received a vast sum of money from persons of quality, or of any reasonable condition, throughout the kingdom, by this expedient; which, though it had a foundation in right, yet in the circumstances of proceeding was very grievous."¹

The oppressions of the old forest laws were revived. The ancient boundaries, which had been settled by perambulations, authorized by a statute of Edward III.,² and which, for many generations, had been fixed by metes and bounds, were, by virtue of presentments of juries under the influence of the king's officers, extended beyond the ancient limits so as to include contiguous lands; and thus new forests were attempted to be set up in many parts of the kingdom.³ The law that no length of prescription or occupation could be

bably raised to £40, as equivalent to the £20 in the reign of Edward II., when the statute *De Militibus* passed. Adam Smith states that "the English pound sterling, in the time of Edward I., contained a pound, Tower weight, of silver of a known fineness." (*Wealth of Nations*, chap. 47.) But whether, when the feudal system was established, the knight's-fee was regulated by the pecuniary value of the land, or even by any fixed rule as to its quantity or quality, (see *ante*, p. 25,) no certainty seems now to be attainable.

¹ Clarendon's History, vol. i. p. 67.

² 1 Edward III., cap. 1.

³ See preamble, 16 Car. I., cap. 16.

pleaded in bar to the right of the crown, prevented the owners of the land adjoining the forests from having the benefit of the inference of right derived from long possession; and the crown only yielded its claim in consideration of great fines, or large annual rents. "This burden," says Lord Clarendon, "lighted most upon persons of quality and honour, who thought themselves above ordinary impressions, and were therefore likely to remember it with more sharpness."¹

But the most memorable of these unconstitutional and oppressive exactions was that of SHIP-MONEY. This was the invention of Noy, who had seceded from the popular party, and become the king's attorney-general. His investigations into old records led to the discovery that in ancient times, when danger of war arose, the seaports and maritime counties had been called upon to furnish ships for the protection of the kingdom; and upon that basis he planned an expedient for raising a large and permanent revenue for the king. The first attempt was made in August, 1634, on the citizens of London; but we shall pass to the time (May, 1635) when the scheme, after the death of Noy, was extended by Lord Keeper Finch to the inland as well as the maritime counties of England and Wales,—and especially to that instance which has rendered the name of JOHN HAMPDEN immortal in the annals of the country.

By the plan put in force, writs were issued under the great seal to the sheriffs of all the English and Welsh counties, directing that each county should provide ships of various burden; but which in the instance of the county of Bucks, in which Hampden resided, was a ship of war of 450 tons, with 180 men, guns, gunpowder, double tackling, victuals, and all other things necessary. It was ordered that she should be brought to Portsmouth on a day named; and, from that time, that the county should furnish also victuals,

¹ Clarendon's History, vol. i. p. 68. See Hallam's Constitutional History, vol. i. p. 422, for a statement of some of the fines. Three are mentioned of £20,000, £19,000, and £12,000.

mariners' wages, and all other necessaries for twenty-six weeks. But as it was never intended that an actual ship should be provided, the sheriff was further commanded, with the aid of the mayors and bailiffs of the several cities and boroughs within his county, to assess the requisite money on the several boroughs and freeholders of the county; and to return the assessment, with the names of the persons charged, in a schedule to the writ. If payment were not voluntarily made by the party assessed, compulsory process was to be issued to enforce it.

The levy, however obnoxious, had been continued annually, for four years, producing a revenue of £200,000 a year, when public opinion set strongly against its legality. An attempt was made to fortify it by the opinions of the judges. They were summoned to the star-chamber in March, 1636, where a case and question were put into their hands, signed by the king, and enclosed in a regal letter. The judges gave their unanimous opinion in affirmation of the question put to them,—that “when the good and safety of the kingdom in general is concerned and the whole kingdom in danger, your majesty may by writ, under the great seal of England, command all your subjects, at their charge, to provide and furnish such number of ships, with men, munition, and victuals, and for such time as you shall think fit, for the defence and safeguard of the kingdom from such danger and peril; and that by law you may compel the doing thereof, in case of refusal or refractoriness. And we are also of opinion that your majesty is the sole judge both of the danger, and when and how the same is to be prevented and avoided.”¹ This opinion became celebrated as an “extra-judicial opinion;” and Lord Keeper Finch signified the king’s command that it should be entered in all the courts of Westminster, and that the judges should publish it through all their circuits; and he inflicted the keenest rebuke of the baseness and subserviency of the judges, by congratulating them that the king had descended to communicate with them.²

¹ Clarendon’s History, vol. i. p. 68.

² State Trials, vol. iii.

The king and his ministers, having secured the judges, could proceed with confidence to put down opposition. Writs of scire facias were issued against the defaulters in the county of Bucks, requiring them to pay the money, or to appear in court and show cause against the demand; and the sheriff returned "that he had made it known (*quod sciri fecit*) to John Hampden, Esq., who was assessed at twenty shillings, and he hath not paid it."¹

Hampden justified his refusal of payment, and raised the question of the right of the crown by a demurrer to the writ of scire facias,—which put at issue the law the writ was issued to enforce. The case was argued before the twelve judges in the court of exchequer-chamber, in April, 1638. The argument occupied twelve days; all the old laws and authorities were cited which showed that the subject could not be taxed without the consent of parliament, and finally the confirmation of those laws by the Petition of Right. But a majority of the judges, four dissenting, pronounced judgment in favour of the crown,—that the writs were sufficient in law to charge Mr. Hampden with the twenty shillings assessed upon him.²

We may resort to the 'History of the Rebellion,' without danger of being accused of misrepresentation of Charles, for an account of various other means by which money was raised by the council and star-chamber, where Archbishop Laud's counsels prevailed. "For the better support," says Lord Clarendon, "of these extraordinary ways, and to protect the agents and instruments who must be employed in them, and to discountenance and suppress all bold inquiries and opposers, the council-table and star-chamber enlarge their jurisdictions to a vast extent; 'holding (as Thucydides said of the Athenians) for honourable, that which pleased; and for just, that which profited;' and being the same persons in several rooms, grew both courts of law to determine right, and courts of revenue to bring money into the treasury; the council-table by proclamations enjoining to the people

¹ State Trials, vol. iii.

² *Idem*.

what was not enjoined by the law, and prohibiting that which was not prohibited; and the star-chamber censuring the breach and disobedience to those proclamations by very great fines and imprisonment; so that any disrespect to any acts of state, or to the persons of statesmen, was in no time more penal; and those foundations of right, by which men valued their security, to the apprehension and understanding of wise men, never more in danger to be destroyed.”¹

FOURTH PARLIAMENT.

Upwards of eleven years had passed without a parliament, and, during that period, according to Lord Clarendon, England had enjoyed great content and prosperity. But the peace of Scotland had been disturbed by attempts which Charles had made to introduce the liturgy of the English Church into that part of his dominions. John Knox had fixed the Scotch people firm in the doctrines and forms of the religious worship of Calvin and Geneva, and they resisted the introduction of episcopacy, the canons, and the liturgy of the Church of England, as relics of popery. To encourage each other in resistance, the people bound themselves by a solemn league and covenant to their own Kirk, and to the General Assembly, by which their religious system was regulated and governed; and they rejected all accommodation with Charles on that subject. He would, after the failure of his several attempts, have been content to allow the Scotch to enjoy their own religion by way of toleration; but so absolute a renunciation of the English Church as they required, he could not submit to. He therefore moved an army to the Scottish border, and encamped within two miles of Berwick, where he found a Scotch army prepared to give him battle.

The king's generals, when they came in sight of the Scotch army, were intimidated by the favourable position which it occupied, and they retreated to the king's camp. Negotiations following, the Scotch negotiators were equally

¹ History of the Rebellion, vol. i. p. 68.

successful in deluding the king's advisers: they obtained easy terms of pacification, and were permitted to withdraw without dissolving their army; whilst the king's army was disbanded, "with so disobliging circumstances, as was not likely to incline them to come together again."¹

The discovery of a letter, signed by the chief men of the covenanters, and addressed to the French king, seeking his assistance, opened the eyes of Charles to the hollowness of the pacification with his Scotch subjects. But he was now without an army, and without money. In his former expedition, all the money that had been provided for its use had been expended; the revenue of the crown had been anticipated; and there remained no other expedient to raise an army than the assistance to be obtained from a parliament. It was hoped by his courtiers that, in the long interval since the last parliament, the old disputes would have been forgotten; that the people, impressed by the peace and unwonted plenty they had enjoyed, would return representatives to the house of commons favourable to the continuance of those blessings; whilst the favourable disposition of the house of peers towards the crown could be entirely depended upon. It was believed also that parliament would express the general sense of prejudice against the Scotch, and of indignation for their presumptuous design of invading England, and would provide supplies sufficient for their punishment. The king's councils were now chiefly led by Archbishop Laud, and Lord Wentworth, who had become Earl of Strafford.

A parliament was therefore summoned, which met on the 13th of April, 1640. Charles opened it with the remark, that never was a king who had a more great and weighty cause to call his people together. He was followed by the lord keeper, Sir John Finch, who said, that "his majesty, sequestering the memory of all former discouragements, was then, through a fatherly affection to his people, and a confidence that they would not fail in their duty to him,

¹ Clarendon, book ii.

graciously pleased to invite them to a sacred unity of hearts and affections, in the service of him and the commonwealth; his majesty having, for many years, not only eased them of the trouble of advising him, but kept up the honour and the splendour of the English crown." He told them that they were summoned to provide the means of raising a powerful army, to reduce the Scotch to just and modest obedience. The charge of such an army must needs amount to so great a sum as cannot be imagined to be in his majesty's coffers. He desired that they would, for awhile, lay aside all other debates, and that they would pass an act for so many subsidies as they should think fit and convenient for so great an action, and hasten the payment of it. As to tonnage and poundage, his majesty declared that he had taken it only *de facto*, according to the example of former kings, from the death of their predecessors, until parliament had passed an act for it themselves.¹

The commons elected Serjeant Glanville their Speaker, who was presented to the king, and confirmed in the usual manner. The intercepted letter to the French king was laid before the commons; but neither the letter, nor the Scotch affairs, attracted notice, and the house first proceeded to appoint committees for the consideration of grievances religious and political.

Petitions, representing grievances, were presented from several English counties; and they led to a debate in which the unconstitutional proceedings of the government, during the long discontinuance of parliament, were reviewed. This was followed by an inquiry into the circumstances connected with the dissolution of the last parliament. A resolution was passed, that the refusal of the Speaker to put the question, by a verbal command from his majesty, was a breach of privilege; and warrants were issued, signed by the Speaker, requiring that the records and proceedings of the court of exchequer, concerning ship-money should be produced by the officers of that court.

¹ Parliamentary History, vol. viii. pp. 397-405.

These steps indicating the course the commons were taking, Charles made another effort to call their attention to his supplies. Sir Henry Vane delivered a message from the king to the house, that it was his pleasure they should attend him, on the 21st of April, at Whitehall; where the lords and commons being assembled in the king's presence, Lord Keeper Finch addressed them.

"Such are his majesty's occasions," he said, "that if the supply be not speedy, it will be of no use; for the army is now marching, and stands at least £100,000 a month. The king doth not expect a great and ample supply for perfecting the work, but only such as without which the charge would be lost and the design frustrated. That done, you may present your grievances to him, and he will hear them with a gracious ear. Concerning ship-money, his majesty never had it in his royal heart to make an annual revenue of it, nor to make the least benefit or profit of it, but what he did or intended was for the honour and glory of the nation; and the accounts of such moneys so received have been brought to the council-table, and the moneys delivered to the treasurer of the navy. If it be objected that tonnage and poundage was given towards the maintenance of a fleet at sea, let me tell you that tonnage and poundage was never intended but for ordinary preservation of the sea,—not to defend the narrow seas when the navies of Christendom are so increased. His majesty cannot this year forbear the writs for ship-money, because they had gone out before it was possible that parliament could grant supply; but he expects your concurrence in the levying it for the future. It will comfort every English heart to know that his majesty hath no thoughts of enriching himself by these writs,—he doth desire but to live as it behoves a king of England, and as every true English heart desireth their king should live."¹

These fair promises and gracious explanations did not avert the commons from their course. They admitted the

Abridged from speech in *Parl. Hist.*, vol. viii. pp. 437–441.

urgency of the occasion:—"Necessity is come upon us like an armed man. Let us not stand too nicely upon circumstances; let us do what may be done with reason and honesty on our part to comply with the king's desires. But let us first give new force to the old laws for maintaining our rights and privileges, and endeavour to restore this nation to its fundamental and vital liberties,—the property of our goods, and the freedom of our persons. The kings of this nation have always governed by parliaments; but now Divines would persuade us that a monarch must be absolute, and that he may do all things *ad libitum*. Since they are so ready to let loose the conscience of the king, to enterprize the change of a long-established government, we are the more carefully to provide for our protection against this pulpit-law, by declaring and reinforcing the municipal laws of the kingdom. The first thing this house should consider of, should be the restoring to the nation their fundamental and vital liberties, and then to consider of the supply desired."¹

The debate terminated in a resolution "to consult with the lords how to prevent innovation in matters of religion; also concerning the property of goods, and the liberties and privileges of parliament; the better to give a present supply to the king." A conference was desired, but the commons' messengers could not be admitted, as the king was in the house of peers.

Charles's difficulties were closing around him, and he went for relief to the house of peers, where, coming unexpectedly, he sat down in his chair of state without his robes. He said that necessity made him come there to-day contrary to expectation. He reminded them of what the lord keeper had said. The house of commons seemed to take into consideration his weighty affairs; but instead of performing his occasions in the first place, they had held consultation of innovations in religion, property of goods, and privileges of

¹ Abridged from the speech of Edmund Waller, Esq. (Parliamentary History, vol. viii. pp. 441-447.)

parliament, and so had put the cart before the horse. If there were time, he should not much stand upon it; but his necessities were so urgent that there could be no delay. He concluded, "I conjure your lordships to consider your own honour and mine, and the preposterous course of the commons; and I desire that your lordships will not join with them, but leave them to themselves. I desire you to be careful on this point; else, if the supply come not in time, I will not say what mischief may and must follow."¹

The lords took a step which, if it was not decidedly unconstitutional, was so treated by the commons. Immediately after the king's departure, they resolved, after debate, that "the supply should have precedency and be resolved upon before any other matter whatsoever; and that they should desire a conference with the commons in order to dispose them thereto." The commons agreed to a conference, at which the lord keeper urged that the commons should trust his majesty at present, having the word of a king, and not only so but of a gentleman; and he communicated the lords' resolution,—remarking, however, that their lordships in that did not move subsidies, but rather declined it, and only gave their advice thereon.

The commons, on receiving the report of the lord keeper's speech, resolved, "that their lordships' voting, propounding, and declaring, concerning matter of supply, before it was moved from this house, is a breach of privilege of this house." They voted an address to the lords, which Mr. Pym was sent to deliver; in which, for the avoiding of misunderstandings, they desired their lordships to take no notice of anything which should be debated by the commons, until they should, themselves, declare the same to their lordships. The lords asked for a further conference, at which they disclaimed any interference with the commons' privilege,—admitting "that the bill of subsidies ought to have its inception and beginning in your house: and that when it comes up to their lordships, and is by them agreed to, it

¹ Parl. Hist., vol. viii. p. 448.

must be returned back to you, and be, by your Speaker, presented." They explained that their intention was to dispose the commons to take into their first and best thoughts the matter of the king's supply, and to give him a speedy answer therein.¹

Whilst the commons, on the 2nd of May, were preparing to hear the report of the conference, Sir Henry Vane, the treasurer of the household, delivered a message from the king, desiring an answer concerning his supply. A committee of the whole house entered upon the consideration of the message, and continued in debate until six o'clock at night, and then adjourned to the 4th of May. On that day the treasurer delivered another message, that "the king, of his grace and favour, is pleased (upon your granting twelve subsidies to be presently passed, and to be paid in three years) not only, for the present, to forbear the further levying of any ship-money, but would also give way to the utter abolishing of it, by any course that you yourselves shall like best."²

The commons, on the same day, proceeded to consider these messages; but not having come to any resolution, the debate was adjourned till the following morning at eight o'clock. But when the commons re-assembled, according to the adjournment, the usher of the black rod appeared to summon them to the upper house. The king, in anger, addressed the lords alone: he thanked them for their affection and their good endeavours, saying, "If there had been any means to have given a happy end to this parliament, you took it; so that it was neither your lordships' fault nor mine, that it was not so." Referring to, but not addressing, the commons, he said, "I know they have insisted very much on grievances. I will not say but there may be some; though I will confidently affirm that there are not, by many degrees, so many as the public voice doth make them. Wherefore I desire you to take notice, that, out of parliament, I shall be as ready, if not more willing, to hear and

¹ Parl. Hist., vol. viii. pp. 453-465.

² *Idem*, p. 466.

redress any just grievances, as in parliament. My lords, I wish the house of commons had remembered how, at first, they were told by my lord keeper that delay was the worst kind of denial; yet I will not lay the fault on the whole house of commons,—I will not judge so uncharitably of those whom, for the most part, I take to be loyal and well-affected subjects; but it hath been the malicious cunning of some few maliciously affected men that hath been the cause of this misunderstanding.” The lord keeper, by the king’s command, then dissolved the parliament. It had lasted only three weeks, and is sometimes called the Short Parliament.

The sudden dissolution created great surprise. “There could not,” says Lord Clarendon, “a greater damp have seized upon the spirits of the nation than this dissolution caused, and men had much of the misery in view which shortly after fell out. It could never be hoped that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill purposes with them; nor could any man imagine what offence they had given, which put the king upon that resolution.” Charles was unfortunate in the conduct of his minister, Sir Henry Vane, on that occasion; for the same historian (who, as Mr. Hyde, was a member of that parliament) informs us that the debate turned wholly upon the question of the supply; the friends of the king urging the consideration of the proportion and manner of the supply, against those who wished to put to the vote the twelve subsidies asked by the king’s message; “which would have been sure to have found a negative from all who thought the sum too great, or were not pleased that it should be given in recompense for ship-money.” But Sir Henry Vane informed the house, that he had authority to tell them that a vote, not in the proportion and manner proposed in the message, would not be accepted by the king; and that declaration, which met with the displeasure of the other privy councillors, led to the adjournment of the house until the following morning, when

the dissolution took place to the surprise of all. "When the king, (Lord Clarendon tells us) had reflected on what he had done, and what was like to fall out, and was better informed of the temper and duty of this house of commons, and that they had voted a supply if Sir Henry Vane had not hindered it by so positive an assertion, that the king would refuse it, he was heartily sorry for what he had done, —and declared, with great anger, that he had never given him such authority, and that he well knew the giving him any supply would have been welcome to him; because the reputation of his subjects assisting him, in that conjuncture, was all that he looked for and considered."¹

FIFTH (THE LONG) PARLIAMENT.

Lord Clarendon informs us that, within an hour after the dissolving of the last parliament, meeting Mr. St. John, who was seldom known to smile, with a most cheerful aspect, whilst he (Mr. Hyde) appeared melancholic, as, in truth, he was, from his heart, Mr. St. John asked him what troubled him. He answered, that "in such a time of confusion, so wise a parliament, which alone could have found remedy for it, was so unseasonably dismissed." The other answered that "all was well, and that it must be worse before it could be better;"—a prophecy founded on a sound view of the incompetency of the king to contend with his adversaries, and of the increasing difficulty of his affairs. Charles's confidence was not, however, apparently abated by the dissolution. In less than three weeks, by the voluntary loan of the lords of the council, and of private gentlemen in the City, £300,000 was raised for his use, and paid into his exchequer. He made no attempt to conciliate his opponents. On the day that the parliament was dissolved, warrants were issued from his privy council to search the study and pockets of Lord Brooke, and of the Earl of Warwick, on suspicion of correspondence with the Scotch; and several members of the house of commons were committed to the

¹ Clarendon's History of the Rebellion, vol. i. p. 140.

Tower, for refusing to answer questions put to them by the privy council. Nothing could more irritate the people than any extraordinary privileges allowed to the clergy; yet the convocation was allowed to continue its sittings after the dissolution of the parliament, contrary to custom; and a new commission was issued, authorizing its sittings "during pleasure," and empowering it to alter and improve the laws of the church. By this the king got six subsidies from the clergy; but great dissatisfaction arose from the canons, which the convocation promulgated, supporting episcopacy in opposition to the Scotch covenant, and by oaths which were imposed for the maintenance of the former. It was necessary to protect its sittings by a guard; and Archbishop Laud sought security from the dissatisfied crowds which assembled at Lambeth, by quitting his palace for Whitehall.¹

The king's difficulties were increased by the advance of the Scotch army. Charles raised an army which was sent to oppose the Scotch; but it was defeated at Neuburn, on the banks of the Tyne, and the Scotch army advanced to Newcastle, and made themselves masters of all the country around.² The difficulty of the king's position was felt by the nation. Petitions were presented to him from twelve of the peers, and from the City of London; the latter stating "apprehension of the great distempers and dangers then threatening the church, the state, and the king's person, by occasion of the war with the Scotch and all its attendant evils,—by innovations in religion,—the oaths and canons lately imposed upon the clergy,—by the great increase of popery, and the employment of popish recusants in places of power and trust,—and from the mischiefs that would arise from the intention which had been expressed of bringing Irish soldiers into the kingdom,—the multitude of monopolies, and the intermission of parliaments." The petitioners prayed the king to summon a parliament; and the petitions being sent to the king at York, they came in aid of similar

¹ Clarendon's History of the Rebellion, vol. i. pp. 140–148.

² Clarendon's History, vol. i. p. 142.

advice which was given him there by a council of peers, which the king, in despair of success with the parliament, had summoned to York. Although not a constitutional proceeding, the advice they gave was entirely so. It was, to negotiate a treaty with the Scotch for their pacification and retirement, and immediately to summon a parliament. The advice was taken; and writs were issued which summoned that parliament so celebrated in the history of the country, and even of the world, as the LONG PARLIAMENT.¹

The king had designed that Sir Thomas Gardiner, Recorder of London, should be elected Speaker of the commons; and it was not doubted that he would have been chosen to one of the four seats of the City of London. But the citizens exerted themselves so much in opposition to the court, that the recorder was rejected in the city; and through the influence of the citizens, and the prevalence of feelings inimical to the court, he was not elected elsewhere. A large proportion of the members of the last parliament were returned to this, including all the Puritan leaders. "There was observed," says Clarendon, "a marvellous elated countenance in most of the members of parliament before they met in the house. The same men who, six months before, were observed to be of very moderate tempers, and to wish that gentle remedies might be applied without opening the wound too wide and exposing it to the air,—and rather to cure what was amiss than too strictly to make inquisition into the causes and original of the malady,—talked now in another dialect both of things and persons."²

The parliament met on the 3rd of November, 1640; it was opened by speeches which indicated the momentous character of the occasion and the purposes for which it was assembled. The king, referring to the sedition of his Scotch subjects, and considering the honour and safety of England at stake, said he had resolved to put himself freely and clearly on the love of his English subjects. For the safety

¹ Clarendon's History, vol. i. p. 147.

² *Idem*, p. 170.

and security of the kingdom, there were two parts chiefly considerable,—first, the chasing out of rebels; and secondly, the satisfying of just grievances, in which he promised to concur heartily and clearly. He informed the parliament that the loan of money, made by the City of London and the lords, would only maintain his army for two months from the time it was granted; and he left it to their consideration what dishonour and mischief it might be if, for want of money, his army be disbanded before the rebels be put out of the kingdom. He referred to the calamities which the northern people endured through the occupation of Newcastle and the surrounding country by the Scotch army; and confident of the love of the parliament to him, and their care for the honour and safety of the kingdom; and exhorting them on their parts, as he on his own, to lay aside all suspicion one of another,—he freely and willingly left to them where to begin. Lord Keeper Finch followed, in a speech in which he detailed the king's proceedings with the Scots, and the arrangement to pay the Scotch army £850 a day during the continuance of the treaty for their removal; he explained that the council of the peers at York was not intended to prevent but to prepare a parliament; and he declared that since the Conquest never was there a time that did more require and pray for the best advice and affection of the English people.¹

The humility of these speeches produced no alteration in the course of proceedings of the commons. On the contrary, aware of the dependent condition of the king, and the straightened state of his affairs, they seem to have assumed at once the possession of unopposed power, which they directly proceeded to employ in denouncing the king's government, and in punishing his ministers and advisers. Having appointed William Lenthall their Speaker, they instituted committees for privileges, for elections, for religion, for grievances, for courts of justice, for trade, and for Irish affairs. On their petition to the king a day of solemn fast

¹ Parliamentary History, vol. ix. pp. 57-68.

was held; and a select committee took care that, on the following Lord's Day, all the members received the sacrament, and that no papist sat in the house.

The lords were animated by the same feelings as the commons, in whose proceedings they were usually ready to co-operate. They began the work of punishment by summoning Sir William Beecher to the bar of their house, to answer by what warrant or direction he had searched the pockets and houses, and carried away the papers, of Lord Brooke and the Earl of Warwick, after the last parliament, and before the expiration of the parliamentary privilege. He justified himself as clerk of the privy council, bound to execute their warrants; and he puzzled the lords by allowing them to infer, that he had acted under the king's direct sanction. But he afterwards confessed that the warrants were signed by the two secretaries of state; and on his humble petition and confession of his error, the lords released him from imprisonment.¹

The commons commenced a long series of impeachments by a resolution to accuse Thomas, Lord Wentworth, Earl of Strafford, Lord Lieutenant of Ireland, of high treason; they sent Mr. Pym with a message to the lords with the resolution, and to desire that Lord Strafford might be sequestered from parliament and committed,—a desire which was complied with by the lords.² They did not, however, neglect the king's necessities; for, in a few days afterwards, they voted him a supply of £100,000.

Sir Francis Windebank, secretary of state, was the next object of displeasure, as lying under the suspicion of releasing popish recusants from prison for his personal gain. Articles of impeachment were drawn up, specifying instances of his misconduct; but he had the prudence to shun a conflict with the commons on a subject in which all their passions would have been roused, and he fled to France.

The convocation did not escape censure for their proceedings. After some defence of them, it was resolved, *nullo*

¹ Parliamentary History, vol. ix. p. 76.

² *Idem*, p. 77.

contradicente, "that the clergy of England, convened in any convocation or synod, or otherwise, have no power to make any constitutions, canons, or acts whatsoever, in matters of doctrine, discipline, or otherwise, to bind the clergy or laity of this land, without common consent in parliament." It was further resolved, "that the canons of the late convocation did not bind the clergy or laity, were contrary to the king's prerogative, and were matters tending to sedition, and of dangerous consequence."¹

Ship-money was referred to a committee, to inquire into its legality. Upon their report being made to the house, it was resolved, *nullo contradicente*, "that the charge imposed upon the subjects for providing and furnishing of ships, and the assessment and raising of money for that purpose, commonly called ship-money; the extrajudicial opinions of the judges, published in the star-chamber, and enrolled in the courts of Westminster; the writs commonly called ship writs; and the judgment in the exchequer on Mr. Hampden's case,—were, severally, against the laws of the realm, the right of property, and the liberty of the subject, contrary to former resolutions of parliament, and to the Petition of Right." The lords, on a subsequent day, passed similar resolutions, declaring the illegality of ship-money, and the proceedings connected with it.²

The commons next visited their own house with punishment, by excluding four members, for being monopolists and patentees, from sitting in parliament.³

Impeachments followed of Archbishop Laud, Lord Keeper Finch, and of others, laymen and ecclesiastics. So irresistible had the power of the commons become, that although the lords, at their instance, had required six of the judges, including the lord chief justice and lord chief baron,—accused of crimes of a high nature, in relation to ship-money,—to enter into recognizances of £10,000 each, to abide the censure of parliament; yet, a few weeks afterwards, one of them, Judge Berkeley, was taken off the bench, in West-

¹ Parl. Hist., vol. ix. p. 84.

² *Idem*, p. 83.

³ *Idem*, p. 92.

minster Hall by the usher of the black rod, and committed to prison, "to the great terror of the rest of his brethren then sitting, and all those of his profession."¹

It is not necessary, however, to our purpose to pursue these impeachments to their conclusion. They afford no novelty in constitutional procedure, having been conducted with the same forms as the earlier instances of impeachment,—either on articles of impeachment,—or "where it was desired to inflict pains and penalties beyond or contrary to the common law, or to serve a special purpose," by bill of attainder,—these proceedings being in the nature of a presentment to the most high and supreme court of criminal jurisdiction, the house of lords, by the most solemn grand inquest of the whole kingdom, the house of commons.² It will suffice to state, that the Earl of Strafford was attainted of high treason by act of attainder, to which Charles gave his royal assent with great reluctance, followed by great remorse;³ that by another act of attainder, at a later period, Laud was attainted and executed;⁴ that Lord Keeper Finch, like Secretary Windebank, saved himself by flight abroad; and that the other cases were disposed of by sentences of heavy fines, or were never brought to trial.

The king completely misapprehended the feelings of the parliament towards the Scotch, when he asked them to con-

¹ Parliamentary History, vol. ix. p. 94.

² Blackstone's Comm., book iv. c. 19.

³ One of the articles of impeachment of Lord Strafford illustrates the views of the king as to the rights which accrued to him when parliament refused supplies. The earl is charged with "counselling and advising the king, that his subjects having denied to supply him, he was loosed and absolved from all rules of government, and that he was to do everything that power would admit; that his majesty had tried all ways, and was refused, and should be acquitted before God and man; and that he had an army in Ireland (meaning the army consisting of papists, his dependants) which he might employ to reduce this kingdom." (Rushworth's Collections, vol. vii. p. 500.) Charles expressed these views, almost in the same words.

⁴ Laud was committed to the Tower in March, 1640, but was not attainted and executed until January, 1644-5.

sider of "chasing out the rebels." The sympathy of the Puritans in parliament was with their co-religionists; and when the subject was taken into consideration by the commons, the house fraternized with them, and voted £300,000 "as a fit proportion for the friendly assistance and relief towards the supply of the losses and necessities of our brethren in Scotland." The assistance and relief were acknowledged by the Scotch commissioners, and they expressed themselves gratified beyond the value of the gift by the kind and Christian manner of granting it to them as brethren.¹

The agitation out-of-doors was not less than that within the walls of parliament. The City of London presented a petition to the house of commons, subscribed by fifteen thousand persons, praying "that the government of archbishops and bishops, deans and archdeacons, with all its dependencies, roots and branches, might be abolished; that all laws in their behalf be made void; and that the government, according to God's Word, might be rightly placed among us." Soon afterwards the commons informed the lords in a conference, that there was a general discontent among the citizens for the reprieval of one Goodman, a seminary priest, lately convicted of high-treason, and sentenced to be banished the kingdom. They added, "that there was a great connivance at Jesuits and priests through the kingdom, to the great disheartening of the people in the time of parliament, when they expected a thorough reformation; and they desired their lordships' assistance to discover such instruments as dared to intercede for the interruption of justice." The lords gave this information to the king, and he summoned both houses to assemble at Whitehall on the 25th of January.²

The king addressed both houses, to lay before them the state of affairs,—to quicken, but not to interrupt their proceedings. He reminded them that there were two armies in the kingdom, in effect maintained by them, and recom-

¹ Parliamentary History, vol. ix. p. 93.

² *Idem*, p. 208.

mended to their care his navy and forts, which were in such condition as was disheartening to our friends and encouraging to our enemies; but last, but not least, he must lay before them the distractions of the government, occasioned, partly, because of the parliament, though not by it,—for some men, more maliciously than ignorantly, will put no difference between reformation and alteration of government. Hence, divine service is irreverently interrupted, petitions tumultuously given, and much of his revenue detained or disputed. He would put them in a way of remedy,—first, by showing his clear intentions; then, by warning them to avoid the rocks that might hinder that good work. First, then, he would readily concur with them to find out and reform all innovations in Church and Commonwealth, and consequently that all courts of justice should be regulated according to law; his intention being to reduce all matters of religion and government to what they were in the purest times of Queen Elizabeth. Moreover, such parts of his revenue as should be found illegal, or grievous to the public, he would willingly lay down, relying entirely on the affections of his people. In telling them what to avoid, he said that he made a great difference betwixt reformation and alteration of government; and if, upon serious debate, it was shown to him that the bishops have some temporal authority inconvenient to the state, and not so necessary to the Church, for the support of episcopacy, he should not be unwilling to persuade them to lay it down. But he could not consent for the taking off their voice in parliament, which they had anciently enjoyed even before the Conquest and ever since; and which, he conceived, he was bound to maintain, as one of the fundamental institutions of the kingdom.¹

Referring to a bill in progress to enforce the holding of a parliament at least once in three years, and by which the sheriffs and returning officers were to be empowered to proceed to election, without the writs of the crown if default

¹ Parliamentary History, vol. ix. p. 208.

were made in issuing them,—he said he liked to have often parliaments, but to give power to sheriffs and constables, and he knew not whom, to do his office,—that he could not yield to. But he was content to have an act which neither intrenched upon his honour nor the inseparable right of the crown concerning parliaments; for which purpose he had commanded his learned counsel to wait on the lords with such propositions as he hoped would give contentment; for he ingenuously confessed that frequent parliaments were the best means to preserve that right understanding between him and his subjects which he so earnestly desired.¹

This was the last speech delivered by Charles in which there appears any confidence that power remained in him to oppose the wishes of the parliament. Soon after its delivery he was sufficiently humbled to make the great Puritan leaders think of place, and he himself to look to them for assistance. Oliver St. John, one of the sternest opposers of the government, was made solicitor-general,—then “an office of great trust,” because the attorney-general was not then usually a member of the house of commons, but called by writ to attend the house of peers, where he sat upon the woolsack at the back of the judges.² The Earl of Bedford, (one of the Puritan leaders of the house of lords,) “was intended to be lord treasurer, and Mr. Pym, chancellor of the exchequer;” but they postponed the acceptance of office “till the revenue was in some degree settled,—at least the bill for tonnage and poundage passed, which both the earl and Mr. Pym did very heartily labour to effect; and had, in their thoughts, many good expedients, by which they intended to raise the revenue of the crown. They thought it also prudent not to take their promotions before

¹ Parliamentary History, vol. ix. p. 211.

² Clarendon, vol. i. p. 210. Lord Clarendon observes, that “so fast and rooted was St. John’s malignity against the king’s government, that he lost no credit with his party out of any apprehension that he would change his side.” (*Idem.*)

offices were provided for some of their chief companions, who would be neither well pleased with their so hasty advancement before them, nor so submissive in the future to follow their dictates.”¹

But whatever advantage, present or prospective, was expected from these accessions, it is from this period that we have to note the submission of Charles to the demands of the parliament, and the rapid descent of his executive power.

He acceded to a request of both houses for an alteration in the tenure of the judges' appointments,—“that for the future the clause *quamdiu se bene gesserint* might be inserted in their patents, instead of *durante bene placito*.”²

He next passed the act for triennial parliaments, framed on the principle deprecated in his speech; the title of which is, “An Act for the Preventing of Inconveniences happening by the long intermission of Parliament.” Although its chief provisions were repealed by Charles II., it is so remarkable an event in the history of the constitution, that we must briefly notice its contents. Its foundation is the ancient law that parliament ought to be holden at least once every year for redress of grievances.³ It provided that, if parliament were not summoned and assembled before the 3rd of September, in every third year,—then a parliament should assemble on the second Monday in November ensuing. The lord-chancellor was required to take an oath to issue the writs in due time; and in his default the peers should meet, and any twelve or more should issue the writs. In case of their default, the sheriffs, mayors, and bailiffs should cause elections to be made; and lastly, in their default, the freeholders, citizens, and burgesses should proceed to election. The parliament should not be dissolved or prorogued within fifty days after the time appointed for their meeting; nor adjourned within fifty days, but by consent of either house respectively.⁴ Although this act gave the she-

¹ Clarendon's History, vol. i. p. 211.

² Parliamentary History, vol. ix. p. 208.

³ See *ante*, p. 123.

⁴ 16 Car. I., cap. 1,—repealed 16 Car. II., cap. 1. The Triennial Act is

riffs and constables the power that Charles deprecated, it left the prerogative of calling parliament untouched, provided it was exercised once in three years.

Another act, under the title of "An Act for the Relief of His Majesty's Army and the Northern parts of the Kingdom," gave the king four entire subsidies. The latter act the commons contrived should depend upon the passing of the Triennial Act. The king passed these with great reluctance, and with an evident conviction that he was playing the game of the commons. "Hitherto you have gone on," he said, "in that which concerns yourselves to amend, and not those things which concern the strength of the kingdom. This I mention, not to reproach you, but to show you the state of things as they are. You have taken the government almost in pieces,—it is almost off the hinges."¹

The king sent a message to the house of lords that, understanding that the forest laws were grievous to his subjects, he, out of his grace and goodness to his people, was willing to lay down all the new bounds of his forests; and that they should be reduced to the same condition as they were before the late justice-seats were held.²

Connected with the act for the relief of the army, by which the subsidies were granted, was another act with the title of "An Act to prevent Inconveniences which may happen by the untimely adjourning, proroguing, or dissolving of this present Parliament." On the assumption that great sums of money must of necessity be speedily advanced and provided for relief of his majesty's army and people in the northern parts of the realm, which cannot be raised without credit,—and credit cannot be obtained until obstacles be first removed, occasioned by fears that this present parliament may be adjourned, prorogued, or dissolved before justice executed upon the delinquents, a fair peace conference the first that appears in the statute-book after the year 1627,—thirteen years without a statute.

¹ Parliamentary History, vol. ix. p. 218.

² *Idem*, p. 233.

cluded between the English and Scotch, and before sufficient provision made for repayment of the moneys to be raised,—it enacted that the parliament should not be dissolved, nor prorogued, or adjourned, unless by an act of parliament to be passed for the purpose; and that neither the house of peers, nor the house of commons, should be adjourned, unless by themselves, or their own order.¹ This act, in rendering parliament indissoluble, but by their own act, contravened a fundamental principle of the constitution; and whilst it superseded the executive authority of the crown, it also took away the elective rights of the people. The king, however, passed it, and another act, at the same time, painful to him to pass, “An Act for the Attainder of the Earl of Strafford for High Treason,”—sparing his feelings, as far as possible, by a commission for giving the royal assent.²

Charles next yielded the contest respecting tonnage and poundage, by passing an act granting him those duties for less than two months, which he had claimed for his life. It declared illegal the right for which he had so long contended, by reciting that the duties had been collected against the laws of the realm, in regard that they had not been granted by parliament, and that the farmers, customers, and collectors had received condign punishment; and it declared that “it is and had been the ancient right of the subjects of this realm that no subsidy, custom, impost, or other charge whatsoever, might or may be laid or imposed upon any merchandise, exported or imported, by subjects, denizens, or aliens, without common consent in parliament.”³ Charles must have felt humbled when, by accepting and passing that bill, he gave up his claim, constantly insisted upon since his first parliament. When passing it, he said, in answer to the Speaker, “You cannot but know that I do freely and frankly give over that right which my predecessors have esteemed their own,—though I confess disputed, yet so that it was

¹ 16 Car. I., cap. 7. Statutes of the Realm.

² Parliamentary History, vol. ix. p. 312.

³ 16 Car. I., cap. 8. Statutes of the Realm.

never yielded by any one of them. Therefore, you must understand this as a mark of my confidence in you thus to put myself wholly upon the love and affections of my people for my subsistence.”¹

Charles was next called upon to give his royal assent to two acts for abolishing the court of star-chamber and the high-commission court. Charles postponed his assent to these bills until, as he said, he had had time to consider them; and in consequence some discontent arose, which he alluded to in his speech when he afterwards gave the royal assent. “Methinks it seems strange that any one should think I could pass two bills of such importance as these without taking some fit time to consider them; for it is no less than to alter, in a great measure, those fundamental laws, ecclesiastical and civil, which many of my predecessors have established.

“If you consider (he proceeded) what I have done in this parliament, discontent will not sit in your hearts. I hope you remember I have granted that the judges hereafter shall hold their places *quamdiu bene se gesserint*. I have bounded the forests, not according to my right, but according to the late customs. I have established the property of the subjects, as witness the free giving up—not the taking away—the ship-money. I have established, by act of parliament, the property of the subject in tonnage and poundage, which never was done in any of my predecessors’ times. I have granted a law for a triennial parliament; and given way to

¹ Parliamentary History, vol. ix. pp. 422-425. It is a curious instance of the caution of the commons not to put the power of the purse out of their hands, that no less than seven acts were passed in little more than one year, granting tonnage and poundage for short periods:—

1. 16 Charles I., cap. 8, from May 25, 1641, to July 15, 1641.
2. ” cap. 12, from July 15, 1641, to August 10, 1641.
3. ” cap. 22, from August 9, 1641, to December 1, 1641.
4. ” cap. 25, from November 30, 1641, to February 1, 1641-2.
5. ” cap. 29, from January 31, 1641-2, to March 25, 1642.
6. ” cap. 31, from March 20, 1641-2, to May 3, 1642.
7. ” cap. 36, from May 2, 1642, to July 2, 1642.

an act for the securing of moneys advanced for the disbanding of the armies. I have given free course of justice against delinquents. I have put the laws in execution against papists. . . .

“For my part I shall omit nothing that may give you just contentment, and study nothing more than your happiness; and therefore I hope you shall see a very good testimony of it by passing these two bills.”¹

The king had called these laws fundamental. The courts which they abolished had been so long used to oppress the subject, by the Tudors as well as the Stuarts, that their abolition was the greatest blow that had yet been given to irresponsible power. The constitutional effect of their abolition was the transfer of all accusations and complaints against the subject, from the star-chamber and high commission courts to the courts of common law,—there to be tried openly by a jury, according to the law of the land.

The first of these acts is called “An Act for the Regulating of the Privy Council, and for taking away the Court commonly called the Star-chamber.” It begins with a recital of Magna Charta, and its train of statutes for protecting the liberty of the subject,² and refers to the statutes of Henry VII., and of Henry VIII.,³ by the former of which the star-chamber was established, or at least moulded into a new form; and it declares that the judges had not kept themselves within the limits of the statute of Henry VII.; but had undertaken to punish where no law did warrant, and to make decrees for things having no such authority, and to inflict heavier punishments than by any law was warranted.

“And forasmuch (it proceeds) as all matters examinable or determinable in the court of star-chamber may have their proper remedy and redress, and their due punishment and correction, by the common law of the land, and in the ordinary courts of justice; and the proceedings, censures, and de-

¹ Parliamentary History, vol. ix. p. 444.

² See *ante*, p. 118.

³ See *ante*, p. 163.

crees of that court have been found to be an intolerable burden to the subjects, and the means to introduce an arbitrary power and government; and forasmuch as the council-table hath of late times assumed a power to intermeddle in civil causes between party and party, and to determine of the estates and liberties of the subjects, contrary to the law of the land;—it ordained that the court commonly called the star-chamber should be absolutely dissolved, taken away, and determined.”

A clause abolished other courts which exercised jurisdiction exclusive of the common law, viz. the court of the president and council in the marches of Wales, the court before the president and council established in the northern parts, the court of the Duchy of Lancaster, and the court of exchequer of the county palatine of Chester.

Another clause enunciated the constitutional principle, “that neither his majesty, nor his privy council, hath or ought to have any jurisdiction, power, or authority, by any arbitrary way whatsoever, to examine or draw in question, determine, or dispose of the lands, tenements, hereditaments, goods, or chattels of any of the subjects of this kingdom; but that the same ought to be tried by the ordinary courts of justice, and by the ordinary course of the law.”¹

The other act is called, “A Repeal of a Branch of a Statute, primo Elizabethæ, concerning Commissioners for Causes Ecclesiastical.” It recites the act, and the clause contained in it, by which Queen Elizabeth established the high commission court, and that the commissioners had, to the great and insufferable wrong and oppression of the king’s subjects, used to fine and imprison them: and therefore the branch of the statute, on which the court was based, was repealed and made void; and persons exercising spiritual or ecclesiastical power by authority derived from the king, to inflict fine, imprisonment, or corporal punishment, were deprived of that power.²

Charles next conceded the illegality of his proceedings in

¹ 16 Car. I., cap. 10.

² 16 Car. I., cap. 10.

regard to ship-money, the enlargement of forests, and the fines on the refusal of knighthood; and extinguished his claims by giving the royal assent to acts for abolishing them.

The "Act for the declaring unlawful and void the late Proceedings touching Ship-money, and for the Vacating of all Records and Process concerning the same," declared and enacted that the charge, imposed upon the subject, for the providing and furnishing of ships, commonly called ship-money,—and the extra-judicial opinion of the justices and barons, and the writs and the judgment against John Hampden,—were contrary to the laws and statutes of this realm, the right of property, the liberty of the subject, former resolutions in parliament, and the Petition of Right.¹

The "Act for the Certainty of Forests, and of the Meets, Meers, Limits, and Bounds of the Forests," declared, that the limits and bounds of the forests should extend no further than those reputed and taken in the twentieth year of King James; and that all presentments to the contrary should be void.²

The "Act for the Prevention of Vexatious Proceedings touching the Order of Knighthood," declared and enacted that, thenceforth no person, of what condition, quality, estate, or degree soever, should be distrained or compelled, by any means, to take upon him the order or dignity of knighthood; nor suffer or undergo any fine, trouble, or molestation, for not having taken upon him such order or dignity.³

We may here pause to consider the effect of this extensive legislation on the power of the crown. It abolished the principal instruments of tyranny employed by the Tudor, and afterwards by the Stuart monarchs. It declared illegal the expedients, to which Charles had resorted, to raise money in the absence of parliament; and it put an end to his long-cherished claim, on the ground of hereditary right, to enjoy tonnage and poundage for his life; giving him, in succession, grants of that revenue for short periods of weeks or months. The most eminent and powerful of his ministers

¹ 16 Car. I., cap. 14. ² 16 Car. I., cap. 16. ³ 16 Car. I., cap. 20.

was attainted and put to death. It was made impossible for him to resist the meeting of parliament once in three years, and its continuance in session for at least fifty days; whilst he conferred on the parliament then existing the prerogative, never before separated from the crown, of continuing or dissolving itself at its will and pleasure. But excepting the latter, which was undoubtedly an unconstitutional interference with the prerogative of the crown, these changes were a just concession to the rights and liberties of the people; and we may also have observed that the speeches in which Charles gave his royal assent to these acts, have none of the defiance and vituperation of his speeches to previous parliaments, and rather breathe the courteous acquiescence, if they do not also exceed the submission, of a constitutional king.

These concessions were deemed by many a sufficient surrender of the royal power; and Mr. Hyde, Lord Falkland, and others of the popular party declared in parliament, their disapproval of further demands. After passing the acts, the king went to Scotland, where Scotch affairs required his presence; and, on his return, the popular feeling had changed so much in his favour, that he made a public entry into London, where "he was received with all imaginary expressions and demonstrations of affection and grandeur." The recorder was warm in his praises and congratulations. He could truly say from the representative body of the City, from whence he had his warrant, that they met his majesty with as much love and affection as ever citizens of London met his royal progenitors; and he added, that these expressions of joy, of love, of loyalty, he met with everywhere from the citizens of London. The king answered, that he returned with as hearty and kind affections to his people in general, and to the City in particular, as could be desired by his loving subjects: the first he should express by governing them all according to the laws of the kingdom, and in maintaining and protecting the true Protestant religion. In answer to another petition of the City, that he

would winter at Whitehall, he said, that although he had proposed to winter at Hampton Court, he should alter his resolution, and with all convenient speed repair to Whitehall.¹ The king afterwards, in a speech to parliament, referred to his reception, "not being in doubt," he said, "that his subjects' affections were any way lessened to him in the time of his absence; for he could not but remember, to his great comfort, the joyful reception he had at his entry into London."²

Shortly before the king's return, the commons passed through their house a "Declaration of the State of the Kingdom," which, as it has acquired historical celebrity as the "Grand Remonstrance," requires our notice. It was the work of the Puritan members of the house, being objected to and opposed by the others, as unparliamentary and inexpedient;—unparliamentary, as being an appeal to the people concerning the government and conduct of the king, or as the work of one only of the constituent bodies of parliament; inexpedient, as a detail of grievances already redressed. The draft was prepared by a committee, and laid before the house early in November; and, after much opposition, a day was fixed for taking it into consideration, clause by clause, by the whole house, the Speaker in the chair. The debate commenced at three o'clock in the afternoon, and was continued until three o'clock on the following morning; when the question being put, whether the Declaration, as amended, should pass, it was carried in the affirmative by a majority of 159 to 148; but a motion that it should be printed, terminated in a resolution that it should not be printed without the particular order of the house.³ The debate produced great passion and vehemence; and the excitement is made evident by a saying of Oliver

¹ Rushworth's Collections, part 3, vol. i. p. 433. He gives the programme of the procession of the king and queen through the city, the speeches of the recorder and the king, etc.

² Parliamentary History, vol. x. pp. 51–93.

³ Rushworth's Collections, part 3, vol. i. p. 426.

Cromwell, who told Lord Falkland as they went out of the house, after the debate, that "If the remonstrance had been rejected, he would have sold all he had the next morning, and never have seen England more; and he knew there were many other honest men of the same resolution."¹

This remonstrance has been considered under different aspects by historians. By Hume, who characterizes it "as consisting of many gross falsehoods, intermingled with some evident truth," it is said to be "a plain signal for further attacks on the royal prerogative; and a declaration that the concessions already made, however important, were not to be regarded as satisfactory; and nothing less was foreseen, whatever ancient names might be preserved, than an abolition almost total of the monarchical government of England."² Mr. Hallam considers that "it was put forward to stem the returning tide of loyalty, which not only threatened to obstruct the further progress of the popular leader, but as they would allege might, by gaining strength, wash away some at least of the bulwarks that had been so recently constructed for the preservation of liberty."³ Another view is that it "was an appeal to the people, rendered necessary by the falsehood and unfaithfulness of the king to all his engagements, in order to bring about a lasting adjustment of right relations between the commons and the crown."⁴

The remonstrance was delivered to the king by a committee of the commons on the 1st of December, accompanied by a petition from the commons in parliament assembled. It is not addressed to the king, of whom it speaks in the third person, nor to the people, nor to any other body or person; but in the petition it is described as "a declaration of the state of the kingdom which the commons had

¹ Clarendon's History; Parl. Hist., vol. x. pp. 26-43, 44-50.

² Hume's History, ch. 55.

³ Hallam's Constitutional History, ch. ix. vol. i. p. 532.

⁴ This is the view of Mr. Forster in his Essay on the Grand Remonstrance. (Forster's Essays, vol. i. p. 173.)

been necessitated to make for the information of your majesty, your peers, and all other your loyal subjects." "But," it is added, "without the least intention to lay any blemish upon your royal person, but only to represent how your royal authority and trust have been abused, to the great prejudice and danger of your majesty, and of all your good subjects."¹

Nor does the Remonstrance treat the king otherwise than with respect, and a due regard to his royal position. It reviews all the acts and conduct of Charles and of his government, from his accession to its date; and it draws a picture of their effects on the happiness and prosperity of the people, that would move to pity and indignation if the power then existed and was still exercised. But these acts and conduct are not imputed to Charles himself; and the Remonstrance loses much of its force from the unsubstantiability of those who are denounced as the prime movers and perverters of the king's power and authority. It is directed against a wicked and malignant party prevalent in the government, afterwards described as "Jesuited papists, bishops, and the corrupt part of the clergy, councillors, and courtiers who have private ends." But none of these are named; so that the king was able, in his answer, to say, in reference to the parties charged, that, so far from admitting divers things in the preamble of the petition, he professed he could not understand them.

The Remonstrance admits that the grievances and oppressions it portrayed were then removed,—“the difficulties seemed to be insuperable which, by the Divine Providence, we have overcome.” It specifies large sums of money that had been raised, “and yet God hath so blessed the en-

¹ The Remonstrance will be found *in extenso* in Rushworth's Collections, part 3, vol. i. p. 438, divided into 206 clauses of various lengths, indicating probably the several clauses put to the house *seriatim*; in Rapin's History of England, second edition, pp. 389–397; in the Parliamentary and Constitutional History, vol. x. pp. 60–89; and in Cobbett's Parliamentary History, vol. ii., edit. 1807. The petition, the king's answer to the petition, and his answer to the Remonstrance, will also be found in those volumes.

deavours of this parliament, that the kingdom is a great gainer by all these charges." "The ship-money is abolished, which cost this kingdom above £200,000 a year. The coat and conduct money and other military charges are taken away, which, in many counties, amounted to little less than the ship-money. The monopolies are all suppressed, whereof some few did prejudice the subject above a million yearly; the soap, £100,000; the wine, £300,000; the leather must needs exceed both, and salt could be no less than that; besides the inferior monopolies, which, if they could be exactly computed, would make up a great sum."

It admits that the king's power of evil was taken away. "That which is more beneficial than all this is, the root of these evils is taken away; which was the arbitrary power pretended to be in his majesty, of taxing his subjects, or charging their estates without consent of parliament, which is now declared to be against law, by the judgment of both houses, and also by an act of parliament."

It reviews the advantages which had resulted from the impeachments and the several new laws. By the former "the living grievances, the evil counsellors and actors of these mischiefs, have been so quelled, that it is likely not only to be an ease to the present time, but a preservation to the future." Among the latter are named the Triennial Act, and the act to prevent the abrupt dissolution of parliament, which "secure a full operation of the present remedy, and afford a perpetual spring of remedies for the future." "The star-chamber, the high-commission, the courts of president and council in the north, the immoderate power of the council-table, are all taken away; the canons and the power of canon-making are blasted by the vote of both houses; the forests are by a good law reduced to their right bounds; and other things of main importance for the good of this kingdom are in proposition. The malignants have endeavoured to work on his majesty ill impressions and opinions of our proceedings, as if we had altogether done our own work and not his, and had obtained from him many

things very prejudicial to the crown, both in respect of prerogative and profit. To wipe out the first part of this slander, we think good only to say that all we have done is for his majesty, his greatness, honour, and support. . . . As to the second branch of this slander, we acknowledge with much thankfulness that his majesty hath passed more good bills to the advantage of his subjects than have been in many ages."

The Remonstrance next proceeds to declare the reformation in view:—"And now what hope have we but in God; when the only means of our subsistence and power of reformation is, under Him, in the parliament? But what can we, the commons, do, without the conjunction of the house of lords? and what conjunction can we expect there, where the bishops and recusant lords are so numerous and prevalent, that they are able to cross and interrupt our best endeavours for reformation, and, by that means, give advantage to this malignant party to traduce our proceedings? . . . We confess our intention is, and our endeavours have been, to reduce within bounds that exorbitant power which the prelates have assumed unto themselves, so contrary both to the Word of God, and the laws of the land; to which end we have passed the bill for the removing them from their temporal power and employments, that so the better they might, with meekness, apply themselves to the discharge of their functions; which bill themselves opposed, and were the principal instruments of crossing it." . . . They then declare their own views of discipline and government of the Church; and desire a general synod of divines, the results of whose consultations should be represented to the parliament, to be there allowed of and confirmed, and receive the stamp of authority.

They deny the charge maliciously made, that they intend to destroy and discourage learning, declaring that they "intend to reform and purge the fountains of learning, the two Universities; that the streams flowing from them may be clear and pure, and an honour and comfort to the whole land."

The malignants tell the people, "that our meddling with the power of episcopacy hath caused sectaries and conventicles. . . . Thus, with Elijah, we are called by this malignant party, the troublers of the state; and still, while we endeavour to reform their abuses, they make us the authors of those mischiefs we study to prevent."

They finally state the courses for perfecting the work begun, and removing all future impediments, under five heads,—

"1. To keep papists in such condition, as that they may not be able to do us any hurt; and for avoiding such connivance and favour as heretofore hath been shown to them, that his majesty be pleased to grant a commission to some choice men named in parliament, who may take notice of their increase, their counsels, and proceedings; and use all due means, by execution of the laws, to prevent any mischievous designs against the peace and safety of the kingdom.—2. That some good course be taken to discover the false conformity of papists to the church, whereby they have been admitted into places of trust.—3. That all illegal grievances and exactions be presented and punished at the sessions and assizes; and that judges and justices be sworn to the due execution of the Petition of Right and other laws.—4. That his majesty be humbly petitioned, by both houses, to employ such counsellors, ambassadors, and ministers as the parliament may have cause to confide in, without which we cannot give his majesty such supplies as is desired.—5. That all counsellors of state may be sworn to observe the laws which concern the subject in his liberty; not to receive, or give, reward or pension, to or from any foreign prince; that all good courses may be taken to unite the two kingdoms of England and Scotland; to take away all differences among ourselves for matters indifferent concerning religion, and to unite ourselves against the common enemies, and to labour, by all offices of friendship, to unite the foreign Churches with us, in the same cause."

"If these things," it concludes, "may be observed, we

doubt not but God will crown this parliament with such success, as shall be the beginning and foundation of more honour and happiness to his majesty, than ever was yet enjoyed by one of his royal predecessors."

Such is the Grand Remonstrance; and it must be confessed that it is difficult to determine from what motive it proceeded, or what object it had in view. Historians have not, in general, considered it as possessing much constitutional value; it is not addressed, prominently, to any great principle then in danger or in doubt, and a document so lengthy and pretending seems to end in a lame and impotent conclusion, when it propounds amongst the remedies for bad government—and those the most prominent—increased vigilance towards papists, and a more extended union of protestants against them. Viewing it as a remonstrance of the house of commons, against the tyranny or illegal government of the king, it loses its effect by its confession, that the grievances complained of had been fully redressed, and that the king's power of evil was taken away; and it is not to be compared, in that respect, with the bold remonstrances of the commons to James,—or even to those, in the early part of this reign, when Charles was in the plenitude of his prerogative,—defying the power, and daring the punishments the kings were then able and willing to inflict. If we view it as a measure rendered necessary by the faithlessness of the king (for which there is no authority in the tenour or terms of the remonstrance), it may be objected that the king had surrendered by acts of parliament the prerogatives which he had assumed, and by which he had illegally oppressed his people; and had thus given the highest security known to the constitution, for the abandonment of his assumed prerogatives; and therefore an appeal to the people, in anticipation of his future misconduct, was singularly ungracious. If another view of it may be hazarded, the Remonstrance may have been intended to aid the design of removing from parliament the bishops and recusant lords whom it so strongly denounced as the obstacles to all pro-

gress. The removal of the bishops was then the great point of the Puritan party; the intention to remove them is confessed in the remonstrance, but it was almost the only point in which they could not get the concurrence of the king and the lords. It was accomplished however within a few months after the Remonstrance; and when we consider the powerful nature of religious feelings, and how strongly they influenced the actions of the Puritans in parliament, it will perhaps be felt that such motives,—and such motives only, in the then subdued condition of the king,—could have fired the energies of the Puritan patriots to the exasperation which the debate produced; and they are, perhaps, adequate to explain the resolution of Cromwell (as the same motives animated the Pilgrim Fathers) to sell all he possessed, and leave the country, if the Remonstrance had not been carried.¹

The king got into collision with both houses, through his having (it appears by the advice of his solicitor-general, St. John) in a speech to them, referred to a bill then in progress for the pressing of soldiers, in which his prerogative to press the freeborn subject was disputed, except under

¹ Professor Smyth attributes the Remonstrance to a religious origin. "The celebrated Remonstrance, which was at last presented to the king, and was so fitted by its tedious ill-humour to drive him to any possible extremity, would probably not have been proposed, much less voted, if the great constitutional question of prerogative and privilege had not been interwoven with others of a theological nature; questions by which it unfortunately happens, that the minds of men may, at any time, be exasperated and embittered to any possible degree of fury and absurdity." (*Lectures on Modern History*, vol. i. p. 387.) Lord Macaulay observes, "After a hot debate of many hours, the remonstrance was carried by only eleven votes. The result of this struggle was highly favourable to the conservative party. It could not be doubted that only some great indiscretion could prevent them from shortly obtaining the predominance in the lower house. The upper house was already their own. Nothing was wanting to ensure their success, but that the king should, in all his conduct, show respect for the laws, and scrupulous good faith towards his subjects." (*History of England*, vol. i. p. 106.)

the exigency of foreign invasion. "Seeing," he said, "there is a dispute raised concerning the bounds of this ancient and undoubted prerogative, to avoid further dispute at this time, I offer that the bill may pass with a *salvo jure*, both for king and people, leaving such debates for a time that may better hear them."

Both houses treated this allusion to a pending bill as a great breach of privilege, and not only joined in a protestation against it, but in great form presented a remonstrance and petition to the king, in which they asserted that it was "their ancient and undoubted right that your majesty ought not to take notice of any matters in agitation and debate in either of the houses of parliament, but by their information or agreement, . . . or to manifest or declare your consent or dissent, approbation or dislike, of the same before it is presented to your majesty in due course of parliament." The king, in his speech in answer, explained, that what he had done was out of his great zeal for the quick despatch of the bill for suppressing the rebellion in Ireland, and his desire to prevent the delay which would have occurred if the bill had passed both houses in a way that he could not have given the royal assent to it; and he added, that he had not the least thought of breaking the privileges of parliament, but should ever protect and uphold them, expecting that they would be as careful not to trench on his just prerogatives; and then there would be little disagreement between them on that point.¹

The value of the latter remonstrance in our days is very little, for the ministers of the crown may now accomplish, on behalf of the king, what was so strongly objected to when done by Charles in his own person. The whole proceeding is a proof that the modern system of government through ministers, was not at that time understood, or but partially acted upon.

We now pass to another phase in Charles's eventful life, when, relinquishing all his compliant submission to the

¹ Parliamentary History, vol. x. p. 99.

commons, and losing sight of his pledged regard to their privileges, he entered into a personal contest with them. The attempted seizure of the five members, one of the most ominous passages of English history, is referred to. Since the Grand Remonstrance, several subjects of dispute and irritation had arisen between the king and the parliament. One has just been mentioned; another arose out of a demand by the commons, that the king should remove the lieutenant of the Tower from his office, and place another nominated by the commons, in his room;—a demand which the peers considered to be an interference with the royal prerogative, and in which, therefore, they refused to concur. Then followed an unpleasant inquiry in the house of commons, in which the queen was involved—relating to information which she alleged had been given to her during Charles's absence in Scotland, that it was intended to seize the persons of herself and the prince, if any attempt were made to bring up the army from the north to overawe the parliament—a scheme suspected and denounced in parliament as the Army Plot. On the ground that the allegation scandalized certain members of the house, an inquiry was entered upon, and Charles was asked to give up the name of the queen's informant, which he refused to do. The commons, too, charged twelve bishops with high treason, for attempting to subvert the laws and being of parliament. Riots and tumults took place daily in the neighbourhood of the houses of parliament; and the bishops, being particularly obnoxious to the crowds, dared not encounter them, and they absented themselves from parliament. Twelve bishops protested in the house of lords that they had been menaced, affronted, and assaulted on their way to the house, and put in danger of their lives; and they went the length of protesting, in writing, against all proceedings in the house during, what they termed, their forced and violent absence. The lords communicated the bishops' protest to the commons, who immediately accused the latter of high treason for interrupting the business of parliament; and

the lords were so compliant as to order the bishops to be taken into custody. The king, also, declined to accede to an address from the commons for a guard; treating their fears for their safety as groundless, assuring them of his protection, and promising condign punishment to any one who should offer them any violence; but in reality hurt and annoyed at their interference with his prerogative.¹

Events like these occurring in one short month were calculated to irritate the king's temper and bewilder his judgment; but he would not have fallen into the rash and dangerous project of seizing the five members, if he had consulted the men whom, about this period, he had attracted to his councils. Lord Falkland had become secretary of state, in the place of Vane; and Sir John Colepepper, knight of the shire for Kent, chancellor of the exchequer; Mr. Hyde, also, had agreed to become a minister, but without actual office; and to these three the king consented to yield the direction of himself and his affairs. These accessions to the king's ministry were brought about by Lord Digby, who had long served the king as his minister, and whom the king had raised to the house of lords. It was intended that Lord Digby should have ceased to be the adviser of the king; but between the king and Digby alone the project of the seizure of the five members was agreed and resolved upon, without the least communication with either of the other three.¹

When the parliament met, after the adjournment for Christmas, the attorney-general attended at the house of lords, and, standing at the clerk's table, stated that the king had commanded him to accuse, and that he did accuse, Lord Kimbolton, a member of the house of peers, Mr. Holles, Mr. Pym, Mr. Hampden, Sir Arthur Haselrigge, and Mr. Strode, members of the house of commons, of high treason. He delivered articles, which he had received from the king, charging them "with having endeavoured to deprive him of

¹ Parliamentary History, vol. x. pp. 120-156.

² Clarendon's History, vol. i. part 2, pp. 340-344.

his royal power, and to place in the subjects an arbitrary and tyrannical power,—by foul aspersions to alienate the affections of the people from the king, and to make him odious to them,—to draw the army to disobedience and to side with them in their treacherous designs,—that they had traitorously invited a foreign power to invade the kingdom,—that they had traitorously endeavoured to subvert the rights and very being of parliaments,—that they had, by force and terror, endeavoured to compel the parliament to join them in their traitorous designs; and had actually raised and countenanced tumults against the king and parliament; and that they had traitorously conspired to levy, and actually had levied war against the king.” The attorney-general demanded a select committee, to take the examination of the witnesses to be produced by the king; and that the persons of the accused should be secured.¹

On the same day the king sent the serjeant-at-arms to the house of commons, with a message demanding the five members to be delivered to the serjeant, and being delivered that he should arrest them of high treason. The commons immediately ordered Lord Falkland, the chancellor of the exchequer, and two other members to attend the king to inform him that the house would take his message into consideration with as much speed as the business would admit; and in the meantime would take care that the gentlemen should be ready to answer any legal charge made against them. The house, also, enjoined the accused members to attend the house daily until further orders.²

The king, nothing daunted, went on the following day, in person, to the house of commons, accompanied by a guard of soldiers, to arrest the accused members. Private information was given of his approach, and the members were removed, the last only quitting the house as the king entered. He passed up to the Speaker's chair, which he took;—and after looking about the house, and not perceiving Mr. Pym, whose person he knew, he asked the Speaker, whether

¹ Parl. Hist., vol. x. p. 157.

² *Idem*, p. 161.

any of those persons were in the house, and where they were. The Speaker, falling on his knees, replied, "I have neither eyes to see nor tongue to speak in this place, but as the house is pleased to direct me, whose servant I am here; and humbly beg your majesty's pardon, that I cannot give any other answer than this, to what your majesty is pleased to demand of me." The king seeing that his attempt had been unsuccessful, addressed the house in a short speech from the Speaker's chair, saying that "when he sent the serjeant-at-arms, he expected obedience, and not a message—that though he would be careful of their privileges, they must know that in cases of treason there was no privilege,—and that so long as those persons he had accused, were in the house, he could not expect that it would be in the right way that he heartily wished it. But since he saw that the birds were flown, he would trouble them no more than to tell them he expected they would send them to him as soon as they returned to the house, otherwise he must take his own course to find them." He retired amidst shouts of "Privilege! Privilege!" and the house, in great excitement, adjourned till the next day.

When the commons assembled, they passed a declaration that "the king's proceedings was a high breach of the rights and privileges of parliament, and that they could not, with the safety of their own persons, sit any longer, without a full vindication of so high a breach, and a sufficient guard wherein they might confide." They then adjourned to the 11th of January; but they appointed a committee to sit in the meantime at Guildhall, with power to consider and resolve of all things that might concern the good and safety of the City and kingdom. The house of lords made a similar adjournment.¹

Mr. Pym vindicated himself before the house of commons from the king's charges. He admitted that "the articles, if proved, were high treason, and to clear himself from them, he should parallel and similize his actions with these articles. If to vote (he said) with the parliament as a member of the

¹ Parliamentary History, vol. x. pp. 163-168.

house, wherein all our votes ought to be free, be to endeavour to subvert the fundamental laws, then I am guilty of the first article. If to agree and consent by vote with the whole state of the kingdom, to ordain and make laws for the good government of the king's subjects, in peace and dutiful obedience to their lawful sovereign, be to introduce an arbitrary and tyrannical government, then I am guilty of the second article. If to consent, by vote with the parliament, to raise a guard or trained band, to secure and defend the persons of the members, environed and beset with many dangers in the absence of the king; and to vote with the house, in obedience to the king's command, at his return, be actually to levy arms against the king, then I am guilty of the third article. If to join with the parliament of England, by free vote, to crave brotherly assistance from Scotland to suppress the rebellion in Ireland, be to invade and encourage a foreign power to invade the kingdom, then am I guilty of high treason, by the fourth article. If to agree with the greatest and wisest counsel of state, to suppress unlawful tumults and riotous assemblies;—to agree with the house, by vote, to all orders, edicts, and declarations for their repelling,—be to raise and countenance them in their unlawful actions, then am I guilty of the fifth article. If by free vote to join with the parliament in publishing of a remonstrance, in setting forth declarations against delinquents in the state, against incendiaries against his majesty and his kingdom, against ill counsellors which labour to avert the king's affections from parliaments,—against those ill-affected bishops that have innovated our religion, oppressed painful, learned, and godly ministers with vexatious suits and molestations in their unjust courts; by cruel sentences of pillory and cutting off their ears;¹ by great fines, banish-

¹ Prynne, Burton, and Bastwick are here alluded to; they were sentenced by the star-chamber to be exposed on scaffolds, to have their ears cut off, and their faces branded with hot irons. The treatment of persons eminent in their respective professions of divinity, law, and physic, as common rogues, for offences of a political nature, raised the anger and indignation of the public.

ments and perpetual imprisonment;—if this be to cast aspersions upon his majesty, and his government, and to alienate the hearts of his loyal subjects, good Protestants and well-affected in religion, from their due obedience to his royal majesty, then I am guilty of the sixth article. If to consent, by vote with the parliament, to put forth proclamations, or to send declarations to his majesty's army, to animate and encourage them to his loyal obedience, to give so many subsidies, and raise so many great sums of money, willingly, for their keeping on foot, to serve the king upon his royal command, on any occasion; to apprehend and attach as delinquents such persons in the same as were disaffected both to his sacred person, his crown and dignity, to his wise and great counsel of parliament; to the true and orthodox doctrine of the Church of England, and the true religion grounded on the doctrine of Christ himself, and established and confirmed by many acts of parliament, in the reigns of Henry VIII., Edward VI., Elizabeth, and James,—if these be to draw his majesty's army into disobedience, and side with us in our dangers, then am I guilty of the seventh article."¹

This answer of the great Puritan leader shows that Charles had founded his charges against the five members wholly on their parliamentary conduct; although small indeed must have been his expectation that the charges could have been sustained in a tribunal which had participated in, or sanctioned, the acts charged against the accused. But he still continued his efforts, even his personal efforts, to arrest the members. During the short recess of parliament, he went into the City, where the accused members were concealed; and, in a speech to the common council assembled at Guildhall, he required their assistance in apprehending the accused. Three days afterwards he issued a proclamation, commanding magistrates and officers to apprehend and convey them to the Tower; but, on the day before parliament reassembled, the king quitted London and retired

¹ Parliamentary History, vol. x. p. 169. Letter from the collections of Sir Henry Goodrich, Bart. London: printed for Peter Cole, 1641.

to his palace at Hampton Court,—never again to return to the metropolis of his kingdom until brought there for his trial and execution.¹

The parliament met on the 11th of January. The accused members were brought in triumph by water to Westminster amidst the plaudits of the people, and took their seats in the house of commons. It was now apparent that all chance of reconciliation was at an end; and both sides prepared for the civil war that was inevitable,—although, for some time longer, the forms of the constitution were complied with, because neither party was prepared, nor liked to incur the responsibility of commencing the outbreak. The substantial executive power had, however, entirely departed from the king, and was assumed by the commons. They issued orders, with the concurrence of the lords, to Sir John Hotham, the king's officer at Hull, not to deliver up the town or its magazine with arms for 16,000 men, without the king's authority, signified by the lords and commons in parliament. The lieutenant of the Tower was again summoned, and at length appeared at the bar of the house of lords, and excused himself for former disregard of the summons by the dilemma he was in between his majesty's commands and their lordships' order; and the commons passed a declaration for putting the kingdom into a posture of defence.²

The king and parliament were now separated, and never afterwards communicated but by messages or petitions, and by royal commission when it was necessary that acts should be passed. The king was sensible of the great error he had fallen into, and of the mischief he had done to his own cause by his rash proceeding.³ He tried to extricate himself

¹ Clar. Hist., vol. i. p. 379. Parl. Hist., vol. x. p. 191.

² Clar. Hist., vol. i. pp. 381-391.

³ The king had promised Falkland, Hyde, and Colepepper, that he would take no step affecting the lower house of parliament without their privy. "Had he kept his promise," Lord Macaulay observes, "it cannot be doubted that the reaction, which was already in progress,

from the difficulty, and to conciliate the parliament by a series of messages, acknowledging that he had interfered with their privileges, and postponing the prosecution of the members; and ultimately he went so far as to abandon any further proceedings against them, and to offer a free pardon. But the commons would accept no reconciliation, and they answered every message by requisitions which increased the difficulties of the king.¹

Charles next tried to procure the mediation of the lords. In a message to the house he suggested "that the parliament should, with all speed, fall into a serious consideration of all those particulars which they should hold necessary, as well for the upholding and maintaining of his just and royal authority, and for the settling of his revenue, as for the present and future establishment of their privileges; the free and quiet enjoying of their estates and fortunes; the security of the true religion then professed by the Church of England; and the settling of ceremonies in such a manner as to take away all just offence."² The lords acquainted the commons that they had received a gracious message, which filled their hearts full of joy and comfort; and they prepared an answer, to thank the king and to let him know that they would take his message into such speedy and serious consideration as a proposition of that great importance required. But the commons would not second the peers' views, and proposed an addition that "the king would be pleased to put the Tower of London, with all other forts, and militia of the whole kingdom, into such hands as the parliament could confide in." The lords rejected the proposed addition; but thirty-two peers signed a protest against the vote, to discharge themselves from all mischief and ill consequences would very soon have become quite as strong as the most respectable royalists would have desired. . . . That the fair prospects which had begun to open before the king were suddenly overcast, that his life was darkened by adversity, and at length shortened by violence, is to be attributed to his own faithlessness and contempt of law." (History of England, vol. i. p. 107.)

¹ Parl. Hist., vol. x. pp. 193-220.

² *Idem*, p. 222.

that might follow from rejecting the desire of the commons.¹

The king gave the royal assent by commission to several bills, the first of which was one granting tonnage and poundage to the 25th of March. It was accompanied by a message that he had given a commission, "not doubting but, as soon as their extraordinary affairs would permit, they would settle a new book of rates (which the act recited that it was the intention of parliament to do), and by granting that subsidy in the usual manner, would give a proof of their good intentions—as they had often expressed, and of which he was fully satisfied,—to consider no less both his substance and splendour than their own liberties and interests."²

The bill for taking away the temporal power of the bishops and clergy is the only other act that requires our notice. This was the third bill introduced by the commons in this parliament for a similar purpose. The first was "A Bill to restrain Bishops, and others in Holy Orders, from intermeddling in secular affairs," which was sent up to the lords on the 1st of May, 1641.³ It was carried there through all the intermediate stages up to the third reading, when it was rejected, after a call of the house, by a great majority.⁴ The second was brought in on the 21st of May, before the rejection of the first, by Sir Edward Dering, and was entitled "A Bill for the utter abolishing and taking away all Archbishops, Bishops, their Chancellors and Commissaries, Deans, Deans and Chapters, Archdeacons, Prebendaries, Chanters, Canons, and all other their under-officers."⁵ This got the name of the "Root and Branch Bill." It was debated with great heat and passion for near twenty days, but was never brought to a conclusion, having been discontinued on account of the king's departure for Scotland.⁶

The title of the third is "An Act for Disabling all persons in Holy Orders to exercise any temporal jurisdiction or

¹ Parliamentary History, vol. x. p. 228.

² *Idem*, p. 260.

³ *Idem*, vol. ix. p. 282.

⁴ *Idem*, p. 372.

⁵ *Idem*, p. 331.

⁶ Clarendon's History, vol. i. p. 276.

authority." It recites that "bishops and persons in holy orders ought not to be entangled with secular jurisdictions, the office of the ministry being of that great importance, that it would take up the whole man. And for that it is found by long experience that their intermeddling with secular jurisdiction had occasioned great mischiefs and scandal, both to church and state, his majesty, out of his religious care of the church and souls of his people, was graciously pleased that it be enacted that no archbishop, or bishop, or other person in holy orders, should at any time after the 15th of February, 1641, have any seat or place, suffrage or voice, or use or execute any power or authority in the parliaments of this realm; nor should be of the privy council, or justice of the peace, of oyer and terminer, or gaol-delivery; or execute any temporal authority by virtue of any commission, but should be wholly incapable and disabled."

The lords passed this bill, almost with unanimity, only three bishops dissenting. The king took time for consideration, which being reported to the commons, they resolved that delay was denial, and desired the lords to join them in reasons for hastening the royal assent. It was given a few days afterwards by commission; and thus the commons obtained, at last, the removal of the bishops from parliament, for which they had so long and so earnestly contended.

It would have been supposed that Charles would have complied with any demand that could have been made upon him, if he assented to a measure so sweeping, and so repugnant to his usual feelings as that just described; but he, at length, took his stand upon the demand of the parliament for his assent to an ordinance concerning the militia; by which persons to be nominated by the commons should be entrusted with authority over the militia of the kingdom. The king declined to concur in that ordinance; and in an answer to the lords, through the lord keeper, he declared "that he could not consent to divest himself of the just power which God and the laws of the kingdom had placed in him

for the defence of his people, and to put it into the hands of others for any indefinite time.”¹ In a conference of lords and commons it was “resolved that the king’s answer was a direct denial of their desires; that those who advised it were enemies to the state; that if the king should persist in it, it would hazard the peace and safety of his kingdoms, unless a speedy remedy were applied by the wisdom and authority of both houses of parliament; that such parts of the kingdom as had put themselves into a posture of defence against the common danger had done nothing but what was justifiable; that it would be a great hazard to the kingdom if the king removed to any remote parts from his parliament, where they could not have convenient access to him on all occasions; and they desired also that the prince might come to St. James’s, or to some place near London, where he might continue.”²

These resolutions were embodied in a message from both houses to the king, in which it was declared “that they were enforced, in all humility to protest, that if the king should persist in his denial, the dangers and distempers of the kingdom are such as will endure no longer delay; and unless he graciously assured them, by their messengers, that he would speedily apply his royal assent to the satisfaction of their former desires, they should be enforced, for the safety of his majesty and the kingdom, to dispose of the militia in such manner as they had propounded, and they resolved to do it accordingly.”³

The king returned an answer, on the 2nd of March, from his palace of Theobald’s. He said, “I am so much amazed at this message that I know not what to answer. You speak of jealousies and fears. Lay your hands on your hearts, and ask yourselves whether I may not likewise be disturbed with fears and jealousies; and if so, I assure you this message hath nothing lessened them. For the militia, I thought so much of it before I sent that answer, and am so much assured that the answer is agreeable to what, in justice or

¹ Parl. Hist., vol. x. p. 319.

² *Idem*, p. 321.

³ *Idem*, p. 323.

reason, you can ask ; or I, in honour grant, that I shall not alter it in any point. For my residence near you, I wish it might be so safe and honourable, that I had no cause to absent myself from Whitehall ; ask yourselves whether I have or not. For my son, I shall take that care of him which shall justify me to God as a father, and to my dominions as a king. To conclude ; I assure you upon my honour, that I have no thought but of peace and justice to my people, which I shall, by all fair means, seek to preserve and maintain ; relying upon the goodness and providence of God for the preservation of myself and my rights.”¹

We must here stop,—we have brought the contest between the king and the parliament to an issue, and we have come to the end of the legislation by which we proposed to limit the extent of our historical inquiries. There is no further statute to record in this reign ; all that follows is without regard to the principles or practice of the ancient constitution. The difficult task will not be attempted, of estimating the degrees of blame or approval which the parties deserve, in the several stages of the great contest ; but upon a general view of it, probably, not many will be found who, testing the incidents by the principles of the constitution, would justify the proceedings of Charles, or condemn those of the parliament down to the epoch of the Grand Remonstrance ; for few will doubt that if his policy and course of action had not been broken down, despotism would have been established. It is from the time of his departure for Scotland,—after having passed the series of acts for extending and confirming the liberties of the people,—that it may be seriously doubted whether the parliament would not have served their country best, by taking their stand on the laws then established, and on the institutions as modified by those laws ; and by directing their great power and influence to keep the king within the bounds of constitutional government, under competent ministers, of whom he about that time made a selection that

¹ Parliamentary History, vol. x. p. 319.

the commons might have approved. When we look forward to the Restoration, and notice the laws that were then passed by way of complement to the legislation of this reign, we feel assured that such laws might have been obtained from Charles at the same time as the other laws; and with much less reluctance than those repealed at the Restoration, which he submitted to pass. It is common to reply to such observations by pointing out the perfidiousness of Charles's character, and his secret resolve to overthrow the concessions involuntarily made, if he should recover his power, or the vigilance of the commons should be relaxed; and it must be confessed that his attempt against the five members very much weakened the hope which appears before that attempt to have been entertained, that he would have contented himself with the constitutional position in which the new laws placed him, and would have carried on the government under the guidance of constitutional ministers. But, on the other hand, it must be considered that Charles had received a severe lesson,—that he could not hope to avert the vigilance and determination of the commons,—and that the failure of his attack on the five members prepared him for yet greater submission; and it would have required,—probably on his part, and certainly on the part of his ministers,—the venture of their lives and fortunes, to have attempted again to govern the country, and to raise supplies, on principles put down by law and condemned by all parties.¹

The breach between Charles and the parliament became complete in August, and during nearly eighteen years the country went through the vicissitudes of civil war, of government by the parliament, by the army, by a council of state, by a council of officers; enjoying the blessings of peace and settled government, only when Cromwell obtained and exercised absolute power. He, by his great abilities and resolu-

¹ The reader is referred to Mr. Hallam's able dissertation on the question, "Whether a thoroughly upright and enlightened man would rather have listed under the royal or parliamentary standard." (*Constitutional History* vol. i. p. 549.)

tion, repressed all disorder, and established a firm government at home; and by the magnanimity of his foreign policy, and influenced by his strong religious feelings, which induced him to undertake the cause of the oppressed, he raised the glory of the nation abroad. But during the whole period the constitution was disregarded; and although imitated by Cromwell in the institutions he established, these could not acquire the freedom and independence which distinguished the ancient institutions, and they became merely instruments of Cromwell's will. During the interregnum, therefore, we must not look for any contribution to the history of the constitution; it was suspended throughout the whole period, only recovering its action at the Restoration. To that event therefore we must now pass; although we may admit that the events of the intermediate period are of the highest interest, and well deserving of study by Englishmen.

The intermediate period will be passed over, for the reason stated above. But there is Mr. Hallam's authority that the period which intervened between the summer of 1642 and the Restoration, may be regarded as not strictly belonging to a work which undertakes to relate the progress of the English constitution. (Constitutional History, vol. i. p. 561.) The most important changes during the interregnum will, however, be indicated by giving a series of them, with their dates.

1642.

- May 22. Lord Keeper Littleton surrendered the great seal to the king.
- May 22. The commons publish a remonstrance declaring the legislative power to be in both houses, without any negative voice in the king.
- August. Civil war commenced.

1643.

- June 15. The Parliament resolved to introduce Presbyterianism into England.
- Nov. 11. The two houses made a great seal.

1644.

- Nov. 26. The new Directory abolished the use of the Common Prayer, etc. Presbyterians and Independents now the rival sects.
- Dec. 9. The Self-denying Ordinance proposed by Cromwell.

1646.

- Sept. 18. Both houses voted that the king should be disposed of as parliament should think fit.
- Oct. 9. An ordinance published abolishing Episcopacy.

1647.

Jan. 30. The king delivered up to parliamentary commissioners by the Scotch.

August. The council of officers propose to the king propositions for the settlement of the kingdom.

Dec. 24. The parliament asked his royal assent to bills, which he refused.

1648.

Jan. 3. Lords and commons vote any further communication with Charles to be high treason.

Dec. 6. Colonel Pride removed from the house of commons a hundred and sixty members supposed to be inclined to monarchy.

1649.

Jan. 2. The lords refused the ordinance for the trial of the king, and adjourned.

Jan. 6. Ordinance passed by the commons.

Jan. 22, 23. The king's trial.

Jan. 27. Adjudged to die as a tyrant, traitor, and murderer.

Jan. 30. The king put to death.

Feb. 1. Lords desire a conference with the commons.

Feb. 6. The commons resolve that the house of peers was useless, dangerous, and ought to be abolished.

Feb. 7. The Prince of Wales takes the title of Charles II. at the Hague.

Feb. 14. A council of state of thirty-nine members appointed, Milton secretary.

Aug. 1. Cromwell made lord-lieutenant of Ireland.

1650.

May 3. Cromwell returned from Ireland.

June 26. Made captain-general of the parliamentary forces.

June 29. Set out for Scotland to oppose Charles.

1651.

Sept. 3. Battle of Worcester, where Charles's forces were routed by Cromwell.

1653.

April 20. Cromwell dissolves the Long Parliament.

June 6. He issued his summons to a hundred and forty persons to take upon themselves the government.

July 4. The Little or Barebones Parliament met.

Nov. 1. Council of state of thirty-one members elected.

Dec. 12. Little Parliament resigned to Cromwell.

Dec. 16. Cromwell made Protector by the council of officers.

1654.

Sept. 4. First Protectorate parliament opened by Cromwell.

1654-5.

Jan. 22. First Protectorate parliament dissolved.

1656.

Sept. 17. Second Protectorate parliament opened.

1657.

May 8. Cromwell refuses the title of king.

1657-8.

Jan. 20. Second session of Protectorate parliament.

Feb. 4. Dissolved by Cromwell.

1658.

Sept. 3. Cromwell died.

Sept. 4. Richard Cromwell proclaimed Protector.

1659.

Jan. 7. Richard opened a parliament.

Jan. 22. Parliament dissolved.

May 25. Richard surrendered his Protectorate.

CHAPTER XVII.

CHARLES II.

King *de jure*, on the death of Charles I. 30th January, 1649.

King *de facto*, at the Restoration. . . . 29th May, 1660 to 1685.

Reigned, *de jure*, 36 years ; *de facto*, 25 years.

General desire for the Restoration.—The Long Parliament restored.—Council of State.—Monk's Proceeding.—Restores the Secluded Members.—Effect of that measure.—A Convention Parliament assembled.—The Restoration of Charles II. resolved.—Arrival of the King.—His Speech.—Royal Assent to Acts, declaring the Convention a Legal Parliament.—For restoring the King's Titles in Legal Process.—Granting him Tonnage and Poundage for Life.—Act of Indemnity.—Monarchy again in Ascendant.—The Church of England Restored.—State of Religious Parties.—King's Declaration from Breda concerning Religion.—Act for the Settlement of Ministers of Religion.—King's Declaration concerning Ecclesiastical Affairs.—Feudal Tenures and Court of Wards abolished in Exchange for Excise on Ale and Beer.—Purveyance Abolished.—Escheat not affected.—Its modern Value.—Savoy Conference.—A New Parliament and Convocation.—Acts declaring New Political Offences.—Restoring Bishops and Clergy to Temporal Power.—Arbitrary Taxation declared Illegal.—Act restraining Petitions to Parliament.—Act declaring the King's Prerogative as to the Militia.—Ecclesiastical Power of the Clergy restored.—Oath *ex-officio* abolished.—King's Speech on the Restoration of the Old Constitution.—Parliament of 1662.—Acts imposing Tests on Corporations.—Act of Uniformity.—Opinions of Historians concerning it.—Act to Regulate Printing.—Act for Regulating the Militia.—Charles's Marriage.—Attempt to obtain Indulgence for Catholics and Dissenters.—Refused by Parliament.—New Triennial Act.—First Conventicle Act.—Separate Taxation by Clergy discontinued.—Attempt to pass an Act for Indulgences.—Five Mile Act.—Appropriation of Supplies.—Examination of Public Accounts.—Lords'

original Jurisdiction in Civil Suits abandoned.—Conventicle Act renewed.—The Cabal.—Controversy between Lords and Commons as to Money Bills.—Suspending Power denied.—Test Act.—Act to prevent Papists sitting in Parliament.—King refuses a Militia Bill.—The Act repealing writ *De Heretico Comburendo*.—*Habeas Corpus Act*.

THE history of England during the period of the Interregnum, displays the agitation of a people deprived of their ancient government; but so enamoured of its forms and principles, that when all opposition was subdued, and power was finally concentrated in one ruler, he found it necessary to imitate the ancient system as far and as closely as the new elements would assimilate to the old. Oliver Cromwell, avoiding the title of King from dread of the disapproval of the army, took the title of PROTECTOR, with analogous powers; and he instituted two houses with similar functions to the houses of parliament. But not regarding the principle of freedom, which the adoption of the ancient system involved, or being unable to carry on his government in accordance with it, he did not forbear from the exercise of despotic authority; and, when he had issued his own ordinances for the levying of taxes, he imitated the worst proceedings of his predecessor Charles, by the intimidation of parties who resisted payment, by imprisonment of their advocates, and by coercion or removal of the judges.¹

After Cromwell's death, and the removal or withdrawal of his son Richard from the protectorship, which he held only a few months, a struggle for power arose amongst Cromwell's old companions in arms; but the wishes of the people were directed to the restoration of the ancient monarchy; and the wish and the power to accomplish it centred in General Monk, who commanded a division of the army in Scotland. The other division, under the command of General Lambert, appointed a council, who assumed the

¹ Ludlow's *Memoirs*, p. 223. Heath's *Chronicle*, p. 691. Clarendon's *Rebellion*, vol. vii. pp. 294–296. Godwin's *History of the Commonwealth*, vol. iv. p. 175. Guizot's *History of Oliver Cromwell*, vol. ii. p. 123.

direction of affairs after Oliver Cromwell's death. They brought about the removal of Richard, and through their influence the Long Parliament was again summoned into existence. It had, some years before, by Cromwell's direction, been deprived, by Colonel Pride, of its presbyterian members, who, about one hundred and sixty in number, became known as the Secluded Members; and it was the remaining members of this parliament, contemptuously called the Rump, which reassembled on the 26th of December, 1659. They appointed a council of state, consisting of twenty-one of their members, and ten of their principal adherents out-of-doors; and true to their republican principles, they required each member to swear a renunciation of Charles Stuart, and of the line of the late King James; and to oppose the setting up of any *single person*, or house of lords, in the commonwealth.¹

Monk resolved in his own mind to restore the king; but finding it necessary to conceal his views, and to temporize with the parliament, he set out with his army from Edinburgh on the 1st of January, 1660, without having disclosed his purpose. He arrived in London on the 3rd of February. He was well received by the parliament, who gave him thanks and large donations; and as soon as he had acquired a position in which it was safe to indicate his purpose, he addressed a letter to the parliament, in which, in the name of himself and his officers, he declared "that the grand cause of the present heats and disaffections in the nation, was that they were not fully represented in parliament; and he intimated the desire of himself and officers,—upon which they could not but insist,—that the parliament would proceed, by a day which he named, to issue writs for elections; and he reminded them that the time hastened on when they had declared their intended dissolution."

Monk next turned his attention to strengthen the numbers of his adherents in the Long Parliament, by restoring the secluded members. The Rump had been engaged in

¹ Parliamentary History, vol. xxii. p. 27.

preparing a bill of qualifications for the future parliament, which would have confined the members to persons of their own views of government and religion. Monk made conditions with the secluded members. He required them to engage to raise a tax for the payment of the army and navy,—to issue writs for a parliament to sit at Westminster in the following April,—to constitute a council of state to see that done,—and to consent to their own dissolution by a time that should be limited to them. These conditions being agreed to, the secluded members were conducted to the house by a military officer, and they took their seats amidst the rage of the Rump.

The effect of this addition to the house was soon apparent. That famous parliament, begun on the 3rd of November, 1640, dissolved itself on the 16th of March, 1660, by a bill or act of its own, which provided also for the calling and holding of a parliament at Westminster, on the 25th of April, 1660. It also prepared the way for the restoration of the old form of government, by providing that “the single actings of the house, enforced by the pressing necessities of the times, were not intended in the least to impinge, much less take away, that ancient native right which the house of peers—consisting of those lords who did engage in the cause of the parliament against the forces raised in the name of the late king, and so continued to the year 1648—had and have to be a part of the parliament of England.”¹

A full parliament (called, as it was not convened by the king's writ, a Convention) was accordingly summoned, and both houses met on the 25th of April, 1660. The commons elected Sir Harbottle Grimstone (a member of the Long Parliament) their Speaker, who was conducted to the chair by, amongst other members, General Monk, who had become knight of the shire for the county of Devon. Charles had stationed himself at Breda, in Holland, ready to act as occasion should require; and he relieved the parliament from

¹ Parliamentary History, vol. xxii. p. 159.

the difficulty of commencing, by sending over Sir John Grenville with letters to both houses, containing a declaration to all his loving subjects, in which Charles laid down, as the basis of his restoration, "a free pardon to all, however faulty soever, who within forty days after the publishing of the declaration should return to the loyalty and obedience of good subjects;—excepting only such persons as should be excepted by parliament;—that no man should be disquieted or called in question for difference of opinion on religion;—an arrangement by parliament of all differences respecting grants and purchases of forfeited estates, and the full satisfaction of the arrears of pay due to the army of General Monk."¹

These terms were received by both houses with great satisfaction. Letters were prepared in reply, and a deputation of members from both houses (amongst whom was Denzil Holles, one of the five members whom the king's father had gone into the house of commons to seize with his own hands) was selected to carry the letters to the king. The city of London testified their approbation by sending fourteen of its citizens. A proclamation by both houses declared Charles to have been king from the time of his father's death; they passed a resolution for his speedy return, and voted £50,000 towards his expenses, with £10,000 for the Duke of York, and £5,000 for the Duke of Gloucester. An English fleet was sent to bring them over, of which the Duke of York took the command. Charles landed at Dover on the 26th of May, and proceeded to Canterbury on the same day, from whence his journey to London was a continued triumph. He delayed his entry into London till the 29th of May, his birth-day; and on that day he received both houses at Whitehall. The Restoration was thus complete, Charles being just thirty years of age.²

Charles admitted into his council the most eminent men of the nation, royalist or presbyterian. Denzil Holles was

¹ Parliamentary History, vol. xxii. p. 238.

² *Idem*, pp. 259–323. Clarendon's Life (continuation), vol. i. p. 221.

made Lord Holles; and Calamy and Baxter, presbyterian clergymen, were made chaplains to the king. Sir Edward Hyde, was lord-chancellor and prime minister; the Duke of Ormond, treasurer of the household; the Earl of Southampton, high treasurer; Sir Edward Nicholas, secretary of state. These, united in the strictest friendship, continued to support each other's credit, and to pursue the interests of the public.¹

But the universal joy which the Restoration caused throughout the kingdom, affected the proceedings of the houses of parliament, and rendered unavailing attempts that were made to place the new king under conditions for the future; and he appeared in the house of lords on the 1st of June, unshackled by any restrictions besides those of the law and constitution, now restored, and the rules for his own conduct, which he had laid down in his Declaration from Breda. The parliament had prepared several bills, to which the king gave the royal assent at his first meeting.

The first of these was to confirm the authority of the parliament, convened without the royal writ. It declared "that the parliament begun at Westminster on the 3rd of November, in the sixteenth year of Charles I. (1640) was dissolved, and that the lords and commons then sitting at Westminster were the two houses of parliament, notwithstanding the want of the king's writ of summons, and as if his majesty had been present in person at the commencement thereof."²

Another act "for the continuance of process, and judicial proceedings continued," abolished the titles and names introduced into the process of the courts of law, under the protectorates of Oliver and Richard, and restored the use of the king's name.³

¹ Hume's History, cap. 63.

² 12 Car. II., cap. 1. An Act for removing and preventing all questions and disputes concerning the assembling and sitting of this present Parliament.

³ 12 Car. II., cap. 3.

A third act granted to the king tonnage and poundage for his life,—thus yielding unasked, what the parliaments of Charles I. had peremptorily refused to him during his reign. It recognized, however, the former struggle, by a recital that “no rates can be imposed upon merchandise imported or exported by subjects or aliens, but by common consent in parliament; and it imposed upon the king the duty of guarding and defending the seas against all persons intending disturbance in the intercourse of trade, and the invading of the realm; for defraying the expenses whereof the subsidy was declared to be given.” This act greatly extended the merchandise and goods liable to taxation; and by means of it, and of other taxes afterwards granted, a revenue of £1,200,000, was provided,—the greatest which any parliament had ever granted.¹

The Convention Parliament also passed an “act of free and general pardon, indemnity, and oblivion.”² This act has now more historical than constitutional interest. The debates which preceded it, in both houses, turned upon the exceptions to be made from the general pardon; the lords advocating a severity that was disapproved by the commons, amongst whom the presbyterians were numerous and influential. Charles, whose interests were concerned in the speedy passing of the bill, and the mitigation of the asperities of the contending cavaliers and roundheads, used his influence in favour of the extension of the pardon; and when the bill received the royal assent, it was wittily said “that the Act of Oblivion was an act of pardon of his enemies, and of oblivion of his friends.” It will suffice here to remark that, of those excepted from the general pardon, Oliver Cromwell, although dead, was one; and by a subsequent act he was attainted, and his property forfeited to the crown.³

Charles when he gave the royal assent to the Act of Indemnity on the 29th of August, which was presented to him with a bill for raising money to pay off and disband the army and navy, made a characteristic allusion to his dependent

¹ 12 Car. II., cap. 4.

² *Idem*, cap. 11.

³ 12 Car. II., cap. 30.

condition. "I am so confident of your affections that I will not move you in anything that relates to myself; and yet I must tell you, I am not richer, that is, I have not so much money in my purse, as when I came. The truth is I have lived principally, ever since, upon what I brought with me; which was indeed your money, for you sent it to me, and I thank you for it. The weekly expense of the navy eats up all you have given me by the bill of tonnage and poundage. Nor have I been able to give my brothers one shilling, nor to keep any table in my house but what I eat myself; and that which troubles me most is, to see many of you come to me at Whitehall, and to think that you must go somewhere else to seek a dinner." He expressed his confidence that they would provide for him with as much affection and frankness as he could desire.¹

In this reign we witness the recovery of the monarchical element to almost absolute power, through the willing prostration of the people, tired of the changes and insecurity of the interregnum, eager to place their idol on the highest pinnacle of sovereignty; and owing such liberty as remained to the forbearance of the king's ministers. Hyde, as lord-chancellor, was the chief minister. He had resided with Charles abroad, where as titular lord-chancellor he had managed all Charles's affairs; and now, since his return, the king giving himself up to pleasure, left everything in his chancellor's hands. To his constitutional training are to be ascribed the moderation of the government, in not taking advantage of the transports that prevailed. "He (says Burnet) resolved not to stretch the prerogative to what it was before the wars; and would neither set aside the Petition of Right, nor endeavour to raise the courts of star-chamber, or high commission again,—which could have been easily done if he had set about it; nor did he think fit to move for the repeal of the act for triennial parliaments, till other matters were well settled. He took care indeed to have all things extorted by the Long Parliament from Charles I. repealed;

¹ Cobbett's Parliamentary History, vol. iv. p. 115.

but in regard to revenues he had no mind to put the king out of the necessity of recourse to parliament.”¹

The restoration of the monarchy carried with it the restoration of the Church of England, and displaced the establishment nominally presbyterian, which had been put in the ascendancy by the Long Parliament, after its adoption of the Solemn League and Covenant. That league,—which had been sworn to even by the king, when during the interregnum he had put himself under the protection of his Scotch subjects, and during the same period by great numbers of the English peers and commoners,—was a compact between the nobility, the ministers of the Gospel, and the commons of the three kingdoms of England, Scotland, and Ireland, to endeavour to preserve in the three kingdoms the reformed religion according to the Church of Scotland, in doctrine, worship, discipline, and government,—to endeavour to bring about the extirpation of popery and prelacy, including in the latter the whole system of church government by a hierarchy of priests,—and to preserve the rights of the parliament, and the king’s person and authority, in the preservation and defence of the true religion. Having been offered to the acceptance of the Long Parliament by commissioners from Scotland, it was referred by the former to the assembly of divines at Westminster, in whom the religious superiority was then placed; and having been approved of by them, it was read before the parliament at St. Margaret’s church, Westminster, where the members assented to it by holding up their hands,—afterwards subscribing their names to it, in their respective houses. Its acceptance and assent to it were made a necessary qualification to a seat in parliament.² The disuse of the common prayer-book, and the substitution of the Directory for Public Worship, followed the adoption of the league.³

¹ Burnet’s Own Time, book ii., *passim*.

² See the Ordinance, in Parliamentary History, vol. xiii. p. 361, under the date of 1644-5.

³ Parl. Hist., vol. xii. p. 396, where a copy of the League will be found.

Five bishops, only, survived at the Restoration, and these had long ceased to exercise any authority. The presbyterians were possessed of most of the great benefices in the city of London and in the two universities;¹ but in more distant counties, large numbers of the episcopal clergy retained their livings, and by management and caution discharged their accustomed duties. The presbyterians had been instrumental in restoring the king, although they must have foreseen, as a necessary consequence, the restoration of the episcopal church. But they allowed themselves to hope for a union of the episcopal and presbyterian systems, according to a model of episcopal government devised by Archbishop Usher; so that the bishops should not govern their dioceses by their single authority, but should in matters of ordination and jurisdiction receive the counsel and concurrence of presbyters. A deputation of their most eminent divines visited the king at Breda, just previous to his restoration, with a view to securing his promise for such a remodelling of the church establishment, and such an alteration of the liturgy, and of the forms and ceremonies connected with its use, as would relieve the conscience of presbyterians in matters in which individual opinion might be allowed to prevail, without affecting the vital truths of the Christian religion, or the true worship of God.

The Declaration from Breda put the king's promise respecting religion in the following terms:²—"And because the passion and uncharitableness of the times have produced several opinions in religion, by which men are engaged in parties and animosities against each other (which, when they shall hereafter unite in a freedom of conversation, will be composed or better understood), we do declare a liberty to tender consciences; and that no man shall be disquieted or called in question for differences of opinion in matters of religion, which do not disturb the peace of the kingdom; and that we shall be ready to consent to such an act of

¹ Burnet's Own Time, book ii.

² Parliamentary History, vol. xxii. p. 240.

parliament as, upon mature deliberation, shall be offered to us for the full granting that indulgence."

The doubtful legality of the Convention Parliament rendered it imprudent to trust to it the arrangement of the religious question; and all that was done was to pass an act to settle the principles on which the church livings should be retained or given up by the ministers who possessed them; and, inasmuch as the act laid down no restriction or qualification founded on conformity to the religious services and articles of the Church of England, and made no distinction between episcopal and presbyterian ordinations, it may have proceeded "on the assumption that the differences between the episcopal and presbyterian churches would be presently arranged so as to admit of presbyterian ministers being retained in the church. The act is called, "An Act for Confirming and Restoring of Ministers." "Every minister, ordained by any ecclesiastical persons,—who had been since the 1st of January, 1642, presented to and was in the actual possession of any benefice, which had become void by death, voluntary resignation, surrender, or other avoidance, on the 25th of December preceding,—should continue to be the lawful incumbent, as if he had been inducted in due form of law, had read and subscribed the articles according to the statute, and notwithstanding anything done or omitted to be done."

"Every minister sequestered or ejected from his living, or who had been dispossessed and kept out after lawful presentation and perception of profits, should be restored to possession of his living on or before the 25th of December following, to which day the removed minister should enjoy the profits; giving his bond to the restored minister to pay to him one moiety of the clear profits and tithes from Michaelmas preceding to Michaelmas following, before the removal of his goods; and then to be clear of all claims for past profits. But with respect to every restored minister, it was a condition of his restoration "that he had not subscribed any petition to bring the late king to trial; nor justified his

murder; nor, by constant refusal to baptize, declared his judgment to be against infant baptism." Both confirmed and restored ministers were required to take the oaths of allegiance and supremacy.¹

The Convention Parliament adjourned in September, and re-assembled on the 6th of November, when it was announced that the king had been pleased to confer the honour of the peerage on Lord-Chancellor Hyde, who was created Baron of Hendon.² In the recess, on the 25th of October, 1660, the king published a declaration to all his loving subjects concerning ecclesiastical affairs,³ for which he received the thanks of the house of commons in a body.⁴ In that declaration he gave additional hopes and encouragement to the presbyterians, to expect an arrangement founded on the union of the episcopal and presbyterian systems;—declaring his intention to prefer no men to be bishops but men of learning, virtue, and piety; he added that, "because the dioceses, especially some of them, were thought too large, he should appoint a sufficient number of suffragan bishops in each diocese. No bishop should ordain, or exercise any part of jurisdiction which appertained to the censures of the church, without the advice and assistance of the presbyters. To the end that the deans and chapters might be better fitted to afford counsel and assistance to the bishops, he should take care that those preferments be given to the most learned and pious presbyters of the diocese; and that an equal number of presbyters, (to those of the chapter,) chosen by the presbyters of the diocese, should advise and assist the chapter in all ordinations, and in every part of the jurisdiction of the Church, appertaining to its censures or the ministry. He stated that he should appoint an equal number of divines, of both persuasions, to review the li-

¹ 12 Car. II., cap. 17.

² Parliamentary History, vol. xxiii. p. 1. He was raised to be Earl of Clarendon at the king's coronation.

³ See it at length, Parliamentary History, vol. xxiii. p. 173.

⁴ *Idem*, p. 5.

turgy, and make such alterations as should be thought most necessary; and to introduce some additional forms, (in the Scripture phrase, as near as may be,) to be left to the minister's choice to use one or other at his discretion. Concerning ceremonies, he stated that he should leave all decisions of that kind to the advice of a national synod, to be duly called; and he should use his best endeavours that such laws should be established as would best provide for the peace of the church and state. Provided, that none should be denied the sacrament of the Lord's Supper, though they do not use the gesture of kneeling in the act of receiving. In the meantime, no man should be compelled to use the cross in baptism; to bow at the name of Jesus; to use the surplice, except in the royal chapel and in cathedrals and the colleges of the universities; and that those who could not conform to the subscription required by the canon, should enjoy their livings without subscription or oath of canonical obedience." The presbyterians in the Convention introduced a bill to give effect to the principles of the Declaration by a law, but it was defeated.

The Convention concluded its constitutional labours by abolishing the revenues of the crown derived from the military tenure of land under the feudal system, and also its right of purveyance. The nature of the *incidents* of feudal tenure have been before explained;¹ and it has been shown how the burden of them was moderated by Magna Charta.² But the statute which was now passed, was considered by Blackstone to be "a greater acquisition to the property of the kingdom than even Magna Charta itself, since that only pruned the luxuriousness that had grown out of the military tenures, and thereby preserved them in vigour; but this statute extirpated the whole, and demolished both root and branches."³

The surrender of these feudal revenues had been the subject of treaty with James I.; but the treaty failed, as we have seen, from the uncertainty felt by the parliament whe-

¹ *Ante*, p. 28. ² *Ante*, p. 51. ³ Commentaries, vol. ii. chap. 5.

ther, when they had granted the compensation, the surrender would be binding on the king's successors, on the principles of divine right.¹ Charles I., at the treaty of Newport, consented to surrender the revenues for an annual sum of £100,000. The Long Parliament voted the abolition of them unconditionally, declaring that they had a right to take away the burden, as a recompense to the whole kingdom, for having ventured their lives and fortunes in that time of great distraction;² and from that period the revenues were not collected, and the court of wards ceased to exercise its functions. The Convention Parliament proceeded on the principle of compensation; and resolved, as a consideration of the surrender, to make up the king's entire revenue to £1,200,000 *per annum*, to be derived in part from a perpetual excise of all beer and other liquors;—a tax which had been introduced by the Long Parliament, for short periods, —yet not without being charged with relieving the landowners at the expense of the community.³

The act which effected the abolition of the feudal tenures, also imposed the duties which were its compensation. It is entitled “An Act for taking away the Court of Wards and Liveries, and Tenures *in Capite*, and by Knights' Service and Purveyance, and for settling a Revenue on his Majesty in lieu thereof.” It adopted the intermission of that court by the Long Parliament, on the 24th of February, 1645, as the date of the abolition; and it enacted “that the court of wards and liveries, and all wardships, liveries, primer seisins and ousterlemains,⁴ values and forfeitures of marriage, by reason of any tenure of the king's majesty, *or of any other*, by knight-service,—and all other gifts, grants, charges, incident

¹ See *ante* p. 243.

² Parliamentary History, vol. iv. p. 264.

³ *Idem*, vol. xxiii. p. 67.

⁴ Livery, or ousterlemain, was the delivery of lands out of the king's hands. When the heir arrived at age, he or she sued out their livery or ousterlemain, paying a fine of half-a-year's profits of the lands. (Blackstone's Com., vol. ii. p. 68.)

or arising for or by reason of wardship, liveries, primer seisin, or ousterlemains—be taken away and discharged from the 24th of February, 1645; and that all fines for alienations, and also *aid pur file marier*, and *pur fair fitz chevalier*, be taken away and discharged as from the same day.”

“All tenures of any lands, held of the king or of any other person or persons, bodies politic or corporate, were declared to be turned into free and common socage, from the 24th of February, 1645, discharged from the feudal charges and incidents; and all future grants of lands by the king should be in free and common socage.”

But it is declared that the act should not take away copyhold tenures, frank-almoign, nor the honorary services of grand-serjeantry.¹

The act consulted the principles of human nature, by transferring the guardianship of children under twenty-one, and not married at the time of their father's death, and the management of their lands and property, to guardians to be appointed by the father, by deed in his lifetime, or by his will (such guardians not being popish recusants).

It was enacted that thenceforth “no money or other thing should be paid or levied, in regard of any provision, carriages, or purveyance for the king, his heirs or successors;—that no person, under warrant, commission, or authority, under the great seal or otherwise, by colour of making provision or purveyance for the king or queen, their children, or household, should take any timber, fuel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage, or other thing whatever, of any of the subjects of the king, without the full and free consent of the owner, had and obtained without menace or enforcement; nor summon, warn, take, use, or require any of the king's subjects to furnish or find horses, oxen, or other cattle, ploughs, wains, or other carriages, without such full and free consent,—that no pre-emption should be allowed or claimed on behalf of the king, queen, or children of the royal family, in market or out of market; but

¹ See *ante*, pp. 29, 30, 44, for a description of these tenures.

for ever after it should be free to all the king's subjects to sell, dispose, or employ their goods to any other persons as they list."¹

The value of the abolition of such a prerogative as purveyance, exercised through the medium of a minion of the crown, may be readily appreciated; but the beneficial effect of the conversion of land held by military tenure into that of common socage is not so obvious. It rendered all the land of the kingdom of two kinds—one *freehold*, the other *copyhold*,—the former the absolute property of the owner, free from all outgoings, alienable by deed, and devisable by will, at the pleasure of the owner; the latter continuing subject to the old feudal charges of fines upon alienation and descent, heriots, and other customary payments to the lord of the manor, but alienable and devisable on these conditions.

But this statute did not take away that right of the crown called *escheat*, by which it succeeds to the lands of persons who die without heirs, or whose heritable blood has been attainted by treason or felony. Escheats were incident to tenure in socage, as well as to tenure by knight-service;² and it still remains a principle of the constitution that the crown, as *parens patriæ*, is entitled to the property of persons who die, leaving no heirs. But in modern days that right is possessed with no advantage to the crown, because its right is surrendered to the public use; and with little advantage to the public, because the government are always open to petitions for the disposal of the property in favour of persons having equitable or moral claims to it. After the passing of these acts, the Convention Parliament, which the king in his speech proposed should be for ever called "the healing and blessed parliament," was dissolved on the 24th of December, 1660.

The national synod promised by the king's Declaration, was held during the parliamentary vacation. It commenced

¹ 12 Car. II., cap. 24.

² Blackstone's Commentaries, vol. i. chap. 8.

on the 25th of March, 1661. A commission was granted to twelve episcopalians and twelve presbyterian divines, with nine assistants to each side, to meet at the Savoy, and to consider the means of uniting both churches. Sheldon, Master of the Savoy and Bishop of London, conducted the proceedings for the Church of England, Baxter for the presbyterians. Sheldon at the first meeting took the ground of possession,—that the church had not desired the meeting,—that they were satisfied with their legal establishment, and had therefore nothing to offer; that it belonged to the other side, who moved for alterations, to offer their exceptions to the laws in being, and to propose the alterations which they desired. But he insisted that all the proposed alterations should be laid before the conference at once, and that all should be transacted in writing, and not by amicable conference, as the presbyterians wished. The presbyterians asked for the modified episcopacy suggested in the Declaration; and objecting to the many reponses by the people in the old liturgy,—the lessons taken out of the apocryphal books,—and requiring that the psalms in the daily service should be according to the new translation,—they offered a liturgy new-drawn by Mr. Baxter. They asked that kneeling at the sacrament might be left free, and that the use of the surplice, of the cross in baptism, of godfathers in baptism, and the holidays, might be abolished. The whole conference turned at last on the point whether it was lawful to insist on ceremonies indifferent in the worship of God. Upon this there was a free conference, “and a fence of argument between Baxter and Gunning, which amused the town for several days,” and which was not concluded when the commission, limited to a certain number of days, expired; and the conference was broken up without having accomplished anything towards the union, but much towards the separation of the contending parties.¹

A new parliament soon followed the conference, elected in the full fervour of the Restoration, and consisting of a

¹ Burnet's Own Time, book ii., *passim*.

large majority of cavaliers, animated by their success over the roundheads, into which two well-known parties the nation had ranged itself during the civil war;—the former, the devoted adherents of the king, and supporters of his prerogative, and consisting chiefly of churchmen, great enemies of the presbyterians;—the latter the supporters of the Long Parliament and Cromwell, and chiefly presbyterians and other dissenters. The lord-chancellor was made Earl of Clarendon. The new parliament assembled on the 8th of May, 1661, and continued in session until the 6th of July. It was found so subservient to the royal purposes, that it was continued, in numerous sessions, for nearly seventeen years; and many of its members having been rewarded with pensions from the court, it received the name of the “Pensionary Parliament.”

Concurrently with the parliament, the convocation assembled, to which the old bishops that survived, and new bishops consecrated to the sees that were void, were summoned. The parliament showed its temper, and foreshadowed its future course by requiring all the members to receive the sacrament according the rules of the Church of England, and by ordering the Solemn League and Covenant to be burned by the common hangman.¹ It was only through the expressed wish of the king that it could be prevailed upon to confirm the Act of Indemnity,—a proceeding which was considered necessary to its validity, from the informality of the origin of the Convention. Its first act was “for safety and preservation of his majesty’s person and government against treasonable and seditious practices and attempts.” It strained the law of treason, and created new offences—those “of maligning the king, or inciting hatred to his person or his government *during his life*; and it made it punishable with *præmunire* to affirm that the Long Parliament was in existence,—that there was any obligation on any one to endeavour to change the government in church or state; or that the houses of parliament, or either of them, had

¹ Commons’ Journals, 1661, June 14.

legislative power without the king. It also declared that the oath called the Solemn League and Covenant was an unlawful oath, and imposed against the fundamental laws and liberties of the kingdom; and that all orders and ordinances of both or either houses of parliament, to which the royal assent, either in person or commission, was not expressly given, were, in the first creation and making, and still were, null and void.”¹

The bishops were restored to their seats in parliament, and the whole clergy to their temporal power, by the repeal of the act of the long parliament, intituled “an act for disabling all persons in holy orders to exercise any temporal jurisdiction or authority.”²

But we see the controlling hand of Clarendon, or of some one not carried away with excess of loyalty, in the proviso to “an act for a free and voluntary present to his Majesty,”—“that no commissions or aids of that nature could be issued out or levied but by authority of parliament; and that the act, and the supply granted by it, should not be drawn into example for the time to come.”³

The recollection of the intimidation and boldness of numerous bodies of petitioners in the time of the Long Parliament, brought forth “an act against tumults and disorders, upon pretence of preparing or presenting public petitions, or other addresses to his majesty or the parliament.” The act declared “tumultuous and disorderly petitions to have been a great means of the late unhappy wars; and it enacted that no one should procure above twenty hands to any petition to the king or parliament for any alteration in church or state, unless the matter thereof be first consented to and ordered by three or more justices of the peace, or the grand jury at the assizes or quarter sessions; or if in London, by the lord mayor, aldermen and commons in common council assembled. No such petition should be

¹ 13 Car. II., cap. 1.

² 13 Car. II., cap. 2, repealing 16 Car. I., cap. 27, *ante*.

³ *Idem*, cap. 4.

presented to the king or parliament accompanied by more than ten persons, upon pain of £100, and three months' imprisonment."¹

The question concerning the militia, upon which Charles I. and the Long Parliament ultimately separated, was determined by an act declaring "the sole right of the militia to be in the king." As it recites that an act was under consideration "for exercising the militia with more safety and ease to the king and the people, which act could not be as yet perfected," it seems to have been passed only to declare the king's prerogative, which it does in the following terms:—"Within all his majesty's realms and dominions the sole supreme government of the militia, and of all forces by sea and land, and of all forts and places of strength, is, and by the laws of England ever was, the undoubted right of the kings and queens of England; and that both or either of the houses of parliament cannot, nor ought to pretend to the same; nor can, nor lawfully may arise, or levy any war, offensive or defensive, against his majesty, his heirs, or lawful successors; and yet the contrary thereof hath of late years been practised almost to the ruin and destruction of this kingdom; and during the late usurped governments many evils and rebellious principles have been instilled into the minds of the people of this kingdom, which, unless prevented, may break forth to the disturbance of the peace and quiet thereof."²

The clergy were reinstated in the *ecclesiastical* power, (of which they were deprived by the statute of the Long Parliament, that abolished the high-commission court,³) by an act which declared that the former act should not take away "any ordinary power or authority from the archbishops, bishops, or clergy; but that they, exercising ecclesiastical jurisdiction, might execute all manner thereof, and all censures and coercions appertaining to it, according to the ecclesiastical laws of the realm; but not so as to give any

¹ 13 Car. II., cap. 5.

² *Idem*, cap. 6.

³ 16 Car. I., cap. 11. See *ante*.

archbishop, bishop, or ecclesiastical judge any ecclesiastical jurisdiction not by law possessed in the year 1639." It also abolished (and perhaps here we may perceive Clarendon's moderation) the oath *ex-officio*, and introduced a constitutional principle of great importance, by declaring that "no archbishop or ecclesiastical person, officer, or minister, should tender or administer to any person whatever, the oath usually called the *oath ex-officio*, or any other oath whereby such person might be charged to confess, or to accuse or to purge him or herself of any criminal matter or thing whereby he or she might be liable to any censure or punishment." It was further declared, that the whole of the statute of Charles I. was repealed, excepting what concerned the high-commission court, or the new creation of some such-like court by commission: that was to remain still illegal.¹

The parliament met in its second session on the 20th of November, 1661. The king addressed them, and congratulated them on the work they had done, and especially on the restoration of the bishops to the house of lords, saying, "That he came to see what he had long desired to see, the lords spiritual and temporal and the commons of England met together to consult for the peace and safety of the church and state, by which parliaments were restored to their primitive lustre and integrity."²

The parliament met after Christmas on the 7th of January, 1661-2, and foreshadowed the proceedings against nonconformists, by "an act for the well-governing and regulating of corporations." It was amongst the middle class of the people that presbyterianism chiefly prevailed; and such parliamentary influence as nonconformists possessed was through the corporations, which enjoyed the right of returning members of parliament. The imposition of a religious test would deprive nonconformists of their corporate franchise. The preamble declared the purpose to be, "to perpetuate the succession in such corporations in the hands of

¹ 13 Car. II., cap. 12.

² Clarendon's Life, vol. i. p. 144.

persons well affected towards his majesty's government; it being too well known that, notwithstanding all his majesty's endeavours and unparalleled indulgence in pardoning all that was past, many evil persons were still working. The act then provided, "that commissioners should be appointed under the great seal, to continue until the 25th of March, 1663, before whom all mayors, aldermen, recorders, bailiffs, town-clerks, common-councilmen,—and other persons bearing any office or offices of magistracy, or places, or trusts, or other employment relating to the government of cities, corporations, and boroughs,—should, when required by the commissioners, take the oaths of allegiance and supremacy; and also an oath,—“that it is not lawful, upon any pretence whatsoever, to take arms against the king; and that the deponent abhorred that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him.” He was also required to subscribe a declaration repudiating the Solemn League and Covenant, as an unlawful oath, imposed upon the subjects of the realm against the known laws and liberties of the kingdom.

“Persons who refused the oaths were *ipso facto* removed from their offices; but the commissioners, or any five or more of them, were also empowered to remove persons who were willing to take the oaths, and to restore persons illegally or unduly removed, and to fill up vacated offices.

“After the expiration of the commissions, the oaths were to be administered by the proper functionaries of the corporations, or by two justices of the peace.”

“No person should be placed, elected, or chosen to any corporate offices or places, that should not, within one year next before such election or choice, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England.”¹

This act established a long-continued inequality in civil rights between churchmen and dissenters; the latter of

¹ 13 Car. II., stat. 2, cap. 1.

whom it excluded from all corporate offices until our own day. It also, in the oath required to be taken, propounded the principle of *passive obedience* and *non-resistance*, in terms so unqualified as to assert the most absolute tyranny to exist in the crown.¹

The parliament adjourned after a short session, and re-assembled on the 19th of May, 1662, to continue the work of crushing the nonconformists. The failure at the Conference to unite two contending religious bodies in a plan of union was doubtless foreseen, and it was referred,—first to a commission of bishops and divines, and afterwards to the convocation,—to make such alterations in the book of common prayer as they deemed advisable. No alteration was made that had any reference to the objections of the presbyterians; and with the addition of a few collects, the Prayer for all Sorts and Conditions of Men, a collect for the parliament, and the General Thanksgiving, the book of Common Prayer was sent to the house of lords to be confirmed by the legislature.²

The Act of Uniformity followed. In a very lengthy preamble it refers to the book of Common Prayer and to the Act of Uniformity of Queen Elizabeth;³ and proceeding upon the statement (alas, how fallacious was any hope of its accomplishment!) that “in regard that nothing conduceth more to the settling of the peace of the nation, nor to the honour of religion and the propagation thereof, than a universal agreement in the public worship of Almighty God,” it proceeded to provide that uniformity by the following enactments:—

“All ministers in any cathedral, collegiate, or parish church or chapel, or other place of public worship in England and Wales, shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, and all other the public and common prayer, in the order and form mentioned in the book an-

¹ Hume's History, cap. 63. ² Burnet's Own Time, book ii., *passim*.

³ See *ante*, p. 207.

nexed to the act, entitled ‘The Book of Common Prayer,’ etc.

“Every parson, vicar, or other minister, who then had or enjoyed any ecclesiastical benefice or promotion, should in the church of his benefice, upon some Lord’s-day before the feast of St. Bartholomew, 1662, openly, publicly, and solemnly read the morning and evening prayer appointed by the book of common prayer; and afterwards, before the congregation there assembled, declare (in the words given in the act) his unfeigned assent and consent to all and everything contained and prescribed in the book of common prayer. If any one neglect or refuse so to do, he should *ipso facto* be deprived of all his spiritual promotions, and the patrons should present to them as though the incumbent were dead.”

A clause imposed a similar obligation and a similar penalty in case of default, on “persons who should after the passing of the act be presented to any benefice; and incumbents keeping curates were required at least once a month to read the common prayers and service, and, if there be occasion, to administer each of the other sacraments and rites, upon pain of forfeiting £5, for every omission, to the poor of the parish.”

“Every dean, canon, and prebendary of every cathedral and collegiate church, and all masters and heads, fellows, chaplains, and tutors of a college, hall, house of learning, or hospital, and every public professor and reader in the universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and every other person in holy orders, and every schoolmaster, keeping a public or private school, and every person instructing or teaching youth in any house or private family,—as well present as future,—was required to subscribe, before the authorities mentioned in the act, and under the penalties for omission also mentioned, the following declaration:—

“I A. B. do declare that it is not lawful, upon any pretence whatever, to take arms against the king; and that I

do abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him; and that I will conform to the liturgy of the Church of England, as it is now by law established; and I do declare that I do hold, there lies no obligation upon me, or on any other person, from the oath commonly called the Solemn League and Covenant, to endeavour any change or alteration of government, either in church or state; and that the same was in itself an unlawful oath, and imposed upon the subjects of this realm, against the known laws and liberties of this kingdom."

"From and after the feast of St. Bartholomew, 1662, no person who at the date of the act was incumbent, and in possession of any parsonage, vicarage, or benefice, and who was not then in holy orders by episcopal ordination,—or who should not before the said feast-day of St. Bartholomew be ordained priest or deacon, according to the form of episcopal ordination,—should have, hold, or enjoy his parsonage, vicarage, or benefice, with cure, or other ecclesiastical promotion within the kingdom; but should be utterly disabled, and (*ipso facto*) deprived of the same, and all his ecclesiastical promotions should be void, as if he was naturally dead."

"No other form or order of common prayer should be openly used in any church, chapel, or public place, of or in any college or hall in either of the universities,—and the several laws and statutes formerly made and then in force for the uniformity of prayer should stand in force for the establishing and confirming the said book."¹

The act made the terms of conformity stricter than they were before the civil war; it put lecturers in the same condition as incumbents, as to oaths and subscriptions; it obliged all persons to subscribe an unfeigned assent and consent to every particular of the book of common prayer, and it rendered all those who had not had episcopal ordination, incapable of holding any ecclesiastical benefice. The latter

¹ 13 & 14 Car. II., cap. 4, An Act for the Uniformity of Public Prayer, etc.

clause was opposed in the house of lords, where the Duke of York and thirteen other peers entered their protest against it.¹

The Act of Uniformity has been generally denounced as a shameful breach of the king's promise made in his Declarations,—as well that from Breda as that published after his restoration; and admitting the impracticability of uniting the episcopalian and presbyterian religionists in one scheme of comprehension,—and even admitting the necessity of providing for the establishment of the Church of England as the religion of the state,—it cannot be denied that it was open to the king and the government, and that his promises required him, to allow nonconformists the exercise of religious worship according to their own views of its acceptability to God.²

Charles was so aware of the imputation his conduct cast on his good faith, that he promised a deputation of pres-

¹ Lords' Journal, xi. pp. 573-577.

² "All the king's promises of toleration and of indulgence to tender consciences were thereby concluded and broken. It is true, Charles, in his Declaration from Breda, had expressed his intention of regulating that indulgence by the advice and authority of parliament; but this limitation could never reasonably be extended to a total infringement and violation of his engagements." (Hume's History, chap. 63.) "There is every reason to presume that the king had no intention but to deceive the presbyterians and their friends in the Convention Parliament by the Declaration of October, 1660. No one who has any sense of honesty and plain dealing can pretend that Charles did not violate the spirit of his Declaration." (Hallam's Constitutional History, vol. ii. pp. 31-38.) "The world has never witnessed a more flagrant violation of a most solemn engagement. Toleration had been offered and was accepted; the king had been restored, and the church re-established; and now that the price had been paid, the benefit was withheld, and instead of the indulgence promised by the contract, was substituted a system of pains and penalties." (Lingard's History, vol. ix. p. 95.) "Then came penal statutes against nonconformists, statutes for which precedents might too easily be found in the puritan legislation, but to which the king could not give his assent without a breach of promise publicly made, in the most important crisis of his life, to those on whom his fate depended." (Macaulay's History, vol. i. p. 176.)

byterian divines who waited on him after the passing of the act, to suspend the execution of it for three months, if they would read the common prayer during that period. Clarendon, although he disapproved of the promise, thought it should be observed. But the postponement of the operation of an act which gave rights to others to take effect on non-compliance with its provisions, could not be accomplished with a due regard to the rights it created, even supposing that the king could have legally exercised a suspending power; and the act coming into force on the 24th of August, 2000 ministers refused compliance, and either resigned or were deprived of their livings. Charles offered bishoprics to some of the principal Presbyterian divines, of whom Reynolds accepted the see of Norwich; but Calamy and Baxter refused the sees of Lichfield and Hereford.¹

In the same session the parliament followed up the Act of Uniformity by a kindred "act for preventing abuses in printing seditious, treasonable, and unlicensed books and pamphlets, and for regulating of printing and printing-presses."

"No person should presume to print within England or abroad, any heretical, seditious, schismatical, or offensive books or pamphlets, wherein any doctrine or opinion should be asserted or maintained contrary to the Christian faith, or the doctrine or discipline of the Church of England,—or which might tend or be to the scandal of religion, or the church, or the government or governors of the church, state, or commonwealth, or of any corporation or person whatsoever; nor should import, publish, sell, or disperse any such book or pamphlet.

"No private person should print any book or pamphlet, unless the whole and every part thereof be first entered in the register of the company of stationers of London, and be first licensed and authorized to be printed by persons constituted to license the same,—viz. law books, by the lord-chancellor, lords chief justices, and the lord chief baron, one or more of them; books of history, concerning the state of

¹ Burnet's Own Time, book ii.

the realm, or affairs of state, by one of the secretaries of state, or their appointees; books of heraldry and arms, by the earl-marshal, or his appointees; and all other books, whether of divinity, physick, philosophy, or whatever science or art, by the Archbishop of Canterbury and Bishop of London, or one of them, or their appointees, or by the chancellor or vice-chancellor of the universities.

“All books imported from beyond sea, should be brought to the port of London only; and no custom-house officer should deliver them out of his custody, before the Archbishop of Canterbury, or the Bishop of London, should have appointed some scholar or learned man, with one or more of the company of stationers, and such others as they should call to their assistance, to be present at the opening thereof, and to view the same. If there should be found any heretical, seditious, schismatical, or other dangerous or offensive book, it should be brought to the archbishop or bishop, to the end that the importer might be proceeded against as an offender.

“No shopkeeper or other person not being licensed by the bishop of the diocese, nor having been seven years apprentice to the trade of a bookseller, printer, or bookbinder, nor being a freeman of London as son of a bookseller, nor being a member of the company of stationers, should, in the city of London or any other market town, buy or sell any bibles, testaments, or other books whatever, upon pain of forfeiture of the same.

“For the time to come there should be twenty master printers, and no more, besides the king’s printers, and the printers for the universities; and but four master founders of letters for printing; these to be nominated and appointed by the archbishop and bishop, as vacancies arose; each master printer to be bound with sureties to the king in £300 not to print any book or books not lawfully licensed.

“Every printer should reserve three printed copies, of the best and largest paper, of every book new printed, or reprinted with additions, and deliver them to the master of

the stationers' company, one for the king's library, the other two for the libraries of the two universities."¹

These are the principal provisions of a long act against "the liberty of the press." It was to continue in force for two years, and no longer; but it was continued by another statute;² and further continued for seven years by the 1 James II., cap. 17, and was therefore in force at the Revolution.

The act for regulating the militia, which the former act stated to be in preparation, was completed and passed in this session. After repeating the preamble of the former act, it empowered the king to issue commissions of lieutenancy to such persons as he should think fit to be his lieutenants for the several counties. The lieutenants were empowered to call together, arm, and array persons into regiments; and in case of insurrection, invasion, or rebellion, to lead them in or out of their counties, according to directions received from the king; and to give commissions to colonels and other subordinate officers, and to appoint deputy lieutenants, first approved by the king. Provision was made for charging the inhabitants of the counties with the finding of horses and soldiers according to the value of their estates; and it was declared that the trainbands then in being should continue until the 25th of March, 1663, and no longer.³

Charles, on the 21st of May, 1662, married Catharine of Portugal, a catholic princess; a resolution taken without the knowledge of his ministers, and persisted in against their advice. About the same period, in the recess of parliament,—actuated by sympathy with the religion of the catholics, and by a desire to afford relief to the protestant dissenters, in accordance with his Declaration from Breda,—he caused a declaration to be published promising, "as far

¹ 13 & 14 Car. II., cap. 33. An act for the same purpose was passed by the Long Parliament on the 20th of September, 1649. (Parliamentary History, vol. x. p. 170.)

² 16 Car. II., cap. 7.

³ 13 & 14 Car. II., cap. 3.

as in him lay, without invading the freedom of parliament, to incline their wisdom in the next approaching session, to concur with him in making some act for relief of peaceable persons of tender and misguided conscience, as might enable him to exercise that power of dispensing which he conceived to be inherent in him." The parliament met on the 18th of February, 1662-63. Charles addressed them in support of his Declaration, desiring them "not to infer that he meant to favour papacy, or to place papists in any office, but merely to give some indulgence to many who professed that religion, who had served his father and himself well; and if the dissenters would demean themselves peaceably and modestly under the government, he heartily wished he had such a power of indulgence, to use upon occasions, as might not needlessly force them out of the kingdom, or staying there, give them cause to conspire against it."¹

The commons took the king's speech into consideration, and voted an address "that it is in no sort advisable that there be any indulgence to persons who presume to dissent from the Act of Uniformity, and religion established." They told the king that his Declaration from Breda was only to do what parliament should advise; nor could it be otherwise understood, because there were laws of uniformity then in being which could not be dispensed with but by act of parliament. They next drew up an humble representation to the king concerning popish priests and jesuits,—all of whom, English, Irish, and Scottish (except those in attendance, by special arrangement, on the two queens, and the foreign ambassadors), they desired should be ordered by proclamation to leave the kingdom by a day to be named.²

The third session of parliament commenced on the 16th of March, 1663-4. "The parliament discovered a continuance of the same principles which had prevailed in all the foregoing. Monarchy and the church were still the objects

¹ Hume's History, cap. 63. Cobbett's Parliamentary History, vol. iv. p. 259.

² Cobbett's Parliamentary History, vol. iv. p. 263.

of regard and affection. During no period of the present reign did this spirit pass more evidently the bounds of reason and moderation."¹ Its only proceeding of a constitutional nature was the repeal of the Triennial Act of the Long Parliament. Charles, in his speech opening parliament, called attention to the act, as "passed in a time very uncareful for the dignity of the crown, or the security of the people." He called on the house of commons to read that act, "and then in God's name do what you think fit for me and yourselves and the whole kingdom. Much as he loved parliaments, he never would suffer a parliament to come together by the means prescribed by that act."² The parliament passed an act in which the Triennial Act of the Long Parliament,—expressed "to be in derogation of his Majesty's just rights and prerogative,"—was repealed; but it was enacted "that the sitting and holding of parliaments should not be interrupted or discontinued above three years at the most."³

In the same session the first of a series of acts was passed to punish nonconformists, corporeally and pecuniarily, for refusing compliance with the Act of Uniformity. It is called "An Act to prevent and suppress Seditious Conventicles."⁴ This act was experimental, its duration being limited to three years, and it therefore expired in 1667. "Any meeting for religious worship, at which five persons were present, more than the family, was declared a conventicle. Every person, above sixteen years of age, present at a conventicle, should lie three months in prison, or pay five pounds, for the first offence; six months, or twenty pounds, for the second offence; and, for the third offence, upon conviction by a jury, was to be banished to any plantation, except New England or Virginia.⁵ . . . Return from transportation, or es-

¹ Hume's History, cap. 64.

² Cobbett's Parliamentary History, p. 291. ³ 16 Car. II., cap. 1.

⁴ 16 Charles II., cap. 4.

⁵ "A refinement of cruelty which separated him from sympathizing friends." (Macaulay's History, vol. i. p. 177.)

cape after conviction, was felony, punishable with death. Persons were prohibited from allowing their private houses to be used as conventicles, and justices of the peace were empowered to enter houses suspected of being conventicles." "All people," says Burnet, "were amazed at this severity; and the empowering of justices of the peace to inflict fines, for the first and second offences, without juries, was thought a great breach on the security of the English constitution, and a raising of the power of the justices to a very arbitrary pitch."¹

The ancient alliance between England and Holland was interrupted in this session by an address of both houses, against the wrongs and indignities, and interruptions of trade received from the United Provinces; and the king, when receiving the address, promised through his minister at the Hague to demand speedy justice and reparation, in the prosecution of which he depended on the promises of parliament to stand by him.² A war speedily followed.

The fourth session of parliament was commenced on the 24th of November, 1664. It is remarkable for a change then made in the mode of granting and raising supplies, and for the discontinuance of separate taxation of the clergy in convocation. The ancient mode of taxation, by subsidies of tenths and fifteenths, was abandoned, and assessments on the several counties, according to the practice of the Long Parliament, were substituted for them. An act was passed, granting a royal aid of £2,477,500, for the purposes of the Dutch war, to be raised in three years.³ It comprehended the spiritual possessions and revenues of the clergy; and, although it provided that "it should not prejudice the ancient rights of the clergy, as an example for the future," separate taxation has never been resumed by the clergy. "The consequence has been that the convocation has declined in importance. Having ceased to give, it was prorogued or dissolved as soon as it was summoned. But the clergy were

¹ Burnet's Own Time, bk. ii.

² Cobbett's Parl. Hist., vol. iv. p. 292.

³ 16 & 17 Car. II., cap. 1.

compensated for the loss of their privilege of self-taxation, by permission to vote for members of the house of commons, in respect of the freehold tenure of their benefices, which they held for life. These changes were produced by a compact between the lord-chancellor and Archbishop Sheldon, with the silent acquiescence of the clergy, and without any act of parliament.¹

Another attempt was made, in this session, to invest Charles with power to grant indulgences in religion. It was a scheme of Lord Ashley, and others of Charles's ministers, indifferent about religion; and it was rendered extremely agreeable to Charles, by being connected with payments for dispensations to be granted, which were estimated to produce a large annual revenue. The lord-chancellor and the lord-treasurer, disapproved the scheme, and urged the king not to engage in it; but a bill was presented in the house of peers, as by the king's direction and approbation, where the ministers opposed each other with vehement rancour. The chancellor and treasurer prevailed, and the bill was withdrawn; but from that period the credit of Clarendon declined; until, three years afterwards, Charles deprived him of his high office, and left him to impeachment and banishment.²

The Great Plague broke out in December, 1664, and raged through the spring and summer months of the following year,—in August and September, sweeping away eight thousand persons in a week. The parliament, to avoid the plague, met at Oxford, in its fifth session, on the 31st of October, 1665, and there commenced its labours with "An Act for restraining Nonconformists from inhabiting in Corporations."³

It seems wonderful that such a scourge should not have softened the hearts of men to charity with each other, and that even bigotry should have selected such a time for forging additional restraints on religious freedom. Bishop Bur-

¹ Burnet's Own Time, book ii. Cobbett's Parl. Hist., vol. iv. p. 308.

² 17 Car. II., cap. 2, A.D. 1665.

³ Clarendon's Life, Continuation, p. 349.

net gives us some idea of the cause: he relates that "England was at this time in a dismal state from the plague, so that the parliament assembled at Oxford, A great many of the ministers of London were driven away by it, though some few stayed. The nonconformists went into the empty pulpits, and preached; and, it was given out, with good success. And in many other places they began to preach openly, not without reflecting on the sins of the court, and the ill usage that they themselves had met with. This was represented very adroitly at Oxford."¹

The act recites that "divers parsons, vicars, curates, lecturers, and other persons in holy orders, had not declared their unfeigned assent and consent to the rites and ceremonies of the Church of England, or made the declaration required by the Act of Uniformity; and that divers other persons, not ordained according to the Church of England, had, since the Act of Oblivion, taken upon them to preach in unlawful assemblies, conventicles, or meetings, under colour or pretence of exercise of religion, contrary to the laws and statutes of the kingdom,—and had settled themselves in divers corporations, sometimes three or more of them in a place, thereby taking opportunity to distil the poisonous principles of schism and rebellion into the hearts of his majesty's subjects, to the great danger of the church and kingdom." It enacts that such persons in holy orders, or pretended holy orders, or pretending to holy orders, who should not have declared their unfeigned assent and consent, and subscribed the declaration as aforesaid; and should not take the oath given in the act (in terms similar to that in the Act of Uniformity),—and who should take upon them to preach in any unlawful assembly, conventicle, or meeting,—should not, unless only in passing on the road, come or be within five miles of any city or town corporate, or borough that sent members to parliament; or of any parish, town, or place, wherein, since the Act of Oblivion, they had been parson, vicar, curate, stipendary, or lecturer, or had taken upon them to preach in unlawful assembly, conventicle, or meet-

¹ Burnet's Own Time, book ii.

ing,—before they should have taken and subscribed the oath before two justices of the peace, upon forfeiture, for every offence, of £40. Such persons, so restrained, and all other persons who should not first take and subscribe the oath, and should not frequent divine service established by law, should not teach any public or private school, or take any boarders or tablers that were taught or instructed by him or her, upon pain of forfeiture of £40. Two justices were empowered to commit an offender for six months, unless before commitment he took the oath in their presence.

The act met with opposition in both houses, but more faintly in the house of commons. The Earl of Southampton, although a minister of the crown, spoke vehemently against it in the house of lords, and declared that, although firm to the church, he could not conscientiously take the oath. All that were the secret favourers of popery (Burnet informs us) promoted it; their constant maxim being, to bring all the sectarians into so desperate a state that they should be forced to accept toleration on the terms on which the king should think fit to grant it.¹

The expenses of the Dutch war made a further supply necessary, and the commons passed an act for a supply of £1,250,000. In this act² we trace the nearer approach of the power afterwards acquired by the parliament of appropriating the supply to the specific purpose for which it was granted; and it is curious that Charles became himself the instrument for fixing this restraint on the executive power. Sir George Downing, one of the tellers of the exchequer, persuaded him that, if he would procure a proviso to be added to the bill of supply, “to make all the money to be raised by the bill to be applied only to those ends for which it was given,” it would take away the power of the lord high treasurer, and enable the king personally so to direct the affairs of the treasury; so that his exchequer would offer the best security for the investment of money, and become the greatest bank in Europe. The proper

¹ Burnet's Own Time, book ii.

² 17 Car. II., cap. 1.

minister for the management of the revenue was the lord-treasurer ; and when an act of supply was passed, and money was wanted more quickly than it could be collected by the farmers of the revenue, it was usual for the king with his chancellor, lord-treasurer, and other ministers, to require the attendance of the London goldsmiths or bankers, (to whom, since the days of Cromwell, such business had passed from the scriveners,) and to receive from them tenders of the money they would individually lend at interest (generally at £8 per cent.) on the security of the supply. When the money was lent, an assignment of revenue was made to the bankers by the lord-treasurer, which entitled them to be paid out of the first money that came into the exchequer. The king's word and faith were understood to be also pledged ; and the confidence in the king's justice, and the lord-treasurer's honour and integrity, was the foundation of the credit which supplied the king's necessities. Charles's ministers, and especially Clarendon, endeavoured to dissuade him from the innovation recommended by Downing ; but it had passed the house of commons ; and, although intercepted in the lords, it could not be recalled without hazarding the supply.

The act passed with a provision for keeping a separate account of the money raised by authority of the act, apart from the king's other revenue, and a separate account of all payments relating to the service of the war ; and that no moneys leviable under the act should be issued out of the exchequer during the war, but by order or warrant, mentioning that they were payable for the service of the war.¹

The parliament (still the same cavalier parliament that commenced in 1661) met in its sixth session on the 21st of September, 1666, after the terrible calamity of the Fire of London. The king told them of the vast expenditure in the Dutch war, and asked for further supplies ; a demand so unexpected that it raised a suspicion of a dishonest appro-

¹ 17 Car. II., cap. 1, sect. 5. Continuation of Life of Clarendon, pp. 190-202.

priation of the money, and a bill was brought into the house of commons to appoint commissioners to examine the accounts of moneys received and issued for the war. It passed through the house of commons, but in the lords it was stopped by the king's known disapproval of it. The commons, however, granted a supply for the war, in the form of a poll-tax; but the act was, "entangled still with the same inconvenient clauses and provisoes which had so unwarily been admitted at Oxford, and which made what was granted inapplicable to the procuring ready money, of which his majesty was now fully convinced." When the king, at the time of proroguing the parliament, received the bill from the Speaker, for his royal assent, he said "he hoped he should live to have bills of this nature in the old style, with fewer provisoes;" and he promised to issue a commission for the examination of the accounts, which was accordingly done.¹

The seventh session was opened on the 10th of October, 1667. The lord keeper, Bridgman (who had succeeded Clarendon, banished by an act of this session), addressed the parliament by the king's command, and communicated the termination of the Dutch war by a treaty of peace signed at Breda. Since the last prorogation, the Dutch, strengthened by the union of France and Denmark, having a great fleet, had actually entered the Medway; and the French, with a great army in the field not far from the seacoast, gave cause to suspect a more serious design against England. He apologized to parliament for not calling them together to consult as to the peace, but time would not permit.

An act was passed, bearing the title of "An Act for taking the Accounts of the several Sums therein mentioned."² It is now of no other importance than as a step in constitutional progress—the establishing of the right of the parliament, and especially of the commons, to inquire into the application of the public revenues,—and showing (in the words of an eminent historian) that the great English revolution of the seventeenth century, that is to say, the transfer of

¹ Clarendon's Life, pp. 314-316.

² 19 Car. II., cap. 9.

the supreme control of the executive administration from the crown to the house of commons, was, through the long existence of this parliament, proceeding noiselessly but steadily.¹

The same progress was being made in settling other parts of the constitution, and in the session which commenced on the 14th of February, 1669-70, the house of lords abandoned their claim to original jurisdiction in civil suits, retaining only their appellant jurisdiction. This claim was not relinquished, however, without a contest between the lords and commons in the previous session of parliament, so warm and irreconcilable that the king found it necessary, in order to terminate it, to prorogue the parliament. It was occasioned by Mr. Skinner, a considerable merchant, who had sustained damages from the East India Company. Passing by the courts of law and equity, he brought the matter originally before the house of lords, who awarded him £5,000 damages. The East India Company appealed to the commons, appearing to them to be the only other co-ordinate power, who voted the lords' proceedings illegal. The lords did the like by the commons' proceedings, and each house ordered the appellants to the other house—Skinner on the one hand, and the governor of the East India Company on the other—into the custody of their respective serjeants-at-arms. The king in opening the session of 1670, proposed what he judged to be the best and safest way to put an end to the differences. "I will myself give present order to rase all records and entries of this matter in the council-books, and in the exchequer; and do desire you to do the like in both houses, that no memory may remain of this dispute between ye; and then I hope all future apprehensions will be removed." The king's recommendation was complied with, and the dispute was thus terminated, never again to be renewed.²

The act against conventicles had expired in 1667, and

¹ Macaulay's History, vol. i. p. 193.

Cobbett's Parliamentary History, vol. iv. p. 444. Hallam's Constitutional History, vol. ii. p. 181.

after the Great Fire of London, and during the period of rebuilding the city, conventicles abounded in all parts of it. But as the churches were rebuilt, the feeling against the nonconformists revived, and the first act of the session of 1670, was one "to prevent and suppress seditious conventicles."¹ "It bears (says Hume) the appearance of mitigating the former persecuting laws; but if we may judge by the spirit which had broken out almost every session during this parliament, it was not intended as any favour to the nonconformists. Experience probably had taught that laws over rigid and severe could not be executed."² "For providing (the preamble states) further and more speedy remedies against the growing and dangerous practices of seditious sectaries and other disloyal persons, who under pretence of tender consciences might at their meetings continue insurrections (as late experience had shown),—any person, aged sixteen or upwards, who after the 10th of May, 1670, should be present at any assembly, conventicle, or meeting, under pretence of religion, in other manner than according to the established church, at which there should ~~be five persons assembled~~ (besides the family, if in an inhabited house), should, on conviction, be fined five shillings for the first offence, and ten shillings for the second and every other offence, to be levied on the goods of the offender, —or in case of his poverty, on those of any other person convicted of the like offence at the same conventicle; but so that not more than £10 be levied on one person for one meeting. Any person who should preach or teach at a conventicle should forfeit, for the first offence, £20, and for every other offence £40, to be levied on his own, or any other person's goods present at the conventicle, if the preacher were a stranger, and his name and habitation were not known, or had fled and could not be found, or should be unable to pay the fine. Any person suffering a conventicle to be held in his house or tenement, should forfeit £20, to be levied in like manner."

¹ 22 Car. II., cap. 1.

² Hume's History, ch. 65.

The act directed a principle of interpretation to be adopted at variance with the established legal principle of construing penal acts,—by declaring that it should be “construed most largely and beneficially for the suppressing of conventicles, and for the justification and encouragement of persons employed in the execution thereof, and that no proceedings by virtue of the act should be reversed, avoided, or impeached for default in form.”

It has been remarked “that it may be perhaps alleged as a sort of extenuation of these severe laws against nonconformists, that they were merely political, and did not spring from any theological bigotry.”¹ The promoters of these laws, on the part of the government, were probably chiefly actuated by political motives, and had principally in view their own political power, or the support of their own political party, when they directed the religious bigotry that prevailed amongst the clergy and the people, to the oppression or destruction of their rivals. Charles, it is well known, had no sympathy with either party of the protestant religionists in the nation; his preference was given to the Roman religion, and he would have gladly seen the nonconformists tolerated, if toleration could have been extended to the catholics. But he calculated on turning the oppression of the nonconformists to his own political purposes; and with similar motives to those which before prompted him to desire to grant indulgences to the proscribed religionists, he now desired to act against them with severity. Colbert, (whom Louis XIV. had sent to England to negotiate a secret treaty with Charles for an alliance to overthrow the existing triple alliance against France, and for which, in consideration of £2,000,000, Charles was to join Louis in a war against Holland, and was to declare himself a catholic,) writing to Louis from Dover, where Charles had personally completed the treaty without the knowledge of his protestant ministers,—and referring to a doubt whether the declaration of war, or of religion should precede,—uses

¹ Hallam's Constitutional History, vol. ii. p. 47.

the following words—"I found them all well disposed not to lose any time in the execution of the things that have been promised. There is nothing, however, yet determined for the principal point; and they don't even pretend to fix it till they return to London, and see what may follow from the severity with which the king designs to make the last act of parliament against the sectaries be observed; and he hopes that their disobedience will give him the easier means of increasing the force of his troops, and coming speedily to the end he proposes."¹

With unparalleled artifice and misdirected skill, Charles not only concealed this treaty from his protestant ministers, but when he associated the ministers known as the Cabal, he had the dexterity to induce them, in ignorance of the existing treaty, to enter into a treaty for the same purposes and objects, except in the article relative to his declaring himself a catholic, which he concealed. By these arts Charles rendered the Cabal responsible for an unpopular war; and they found that their safety lay in strengthening the authority of the king their master.² These five ministers were Clifford, Ashley, Buckingham, Arlington, and Lauderdale, the initial letters of whose names happened to compose the word 'Cabal.' Never was there a more dangerous ministry in England, nor one more noted for pernicious counsel.³

The parliament met after an adjournment, on the 24th of October, 1670. Lord Keeper Bridgman, from whom the private treaty with France had been concealed, asked for supplies in support of the triple alliance existing between England, Holland, and Sweden;—which gave rise to the last attempt of the lords to regain the right of making amend-

¹ *Memoirs of Great Britain, with appendixes of state papers, letters, etc., from the Dépôts des Affaires Étrangères, at Versailles, by Sir John Dalrymple, Bart., 1790, vol. i. ch. 2, p. 41, Appendix, p. 106.*

² *Dalrymple, vol. i. ch. 2, and Appendix.*

³ *Hume's History, ch. 65, where see the character and nature of the counsels of the Cabal described.*

ments or abatements in money bills. The commons had passed a bill for "an additional imposition on foreign commodities;" against which certain merchants, deeming it a grievance, had petitioned the lords for relief. The lords demanded a conference with the commons, and a committee of both houses was appointed. The managers of the commons, referring to several clauses in which the lords had varied the rates "on sums, in species, and in time," declared that "there was a fundamental right in the commons, both as to the matter and the measure, and the time, unalterable, and which they cannot part with." The lords, on receiving the report of the conference, resolved, *nem. con.*, "that the power exercised by the house of peers in making amendments and abatements in the bill, both as to the matter, measure, and time, concerning the rates and impositions on merchandise, is a fundamental and inherent right of the house of peers, from which they cannot depart." Two other conferences were held, at which the respective houses supported their claims by 'Reasons;' but before the respective rights were settled, and in order to put an end to the dispute, the king prorogued the parliament. This controversy was never afterwards revived.

The parliament met in their tenth session on the 4th of February, 1672-3, and gave proof that although ministers might advise, and placemen might support measures to enslave their country, a house of commons—although consisting for the most part of supporters of church and state—could not be found in which a majority of Englishmen would deliberately uproot the fundamental principles of the constitution. Charles in the recess issued another declaration of indulgence to dissenters and papists, in which he exercised the power of suspending the laws affecting them. Assuming "the supreme power in ecclesiastical matters, which is not only inherent in us, but hath been declared and recognized to be so by several statutes," he declared his "will and pleasure to be that the execution of all penal laws in matters ecclesiastical, against whatsoever sort of

nonconformists or recusants, be immediately suspended, and they are hereby suspended. And all judges of assize and gaol-delivery, sheriffs, justices of the peace, mayors, bailiffs, and other officers whatsoever, ecclesiastical or civil, are to take notice of it, and to pay due obedience thereunto." He declared that "a sufficient number of places of worship for nonconformists should be provided in all parts of the kingdom, where they might assemble, with teachers approved by him ; but as to recusants of the Roman Catholic religion, they should not be allowed public places of worship, but only exemption from the penal laws, and the exercise of worship in their private houses only."

Charles anticipated the disapproval of this measure when he opened the session, by declaring that he should take it very ill to receive contradiction on what he had done, saying, "I will deal plainly with you,—I am resolved to stick to the Declaration." Referring to a rumour that the forces he had raised "were designed to control law and property," he said that he intended to increase them, and that he would preserve the reformed protestant religion and the church as established, and that no man's property or liberty should ever be invaded.²

The house of commons remonstrated in an address, "that penal statutes in matters ecclesiastical cannot be suspended but by act of parliament;" and the king having returned an ambiguous answer, they voted a second address, in which they asserted that his answer was "not sufficient to clear the apprehensions that may justly remain in the minds of your people, by your majesty's having claimed a power to suspend penal statutes in matters ecclesiastical, and which your majesty does still seem to assert in your answer, 'to be entrusted in the crown, and never questioned in the reigns of any of your ancestors;' wherein we humbly conceive your majesty hath been very much misinformed ; since no such power was ever claimed or exercised by any of your predecessors ; and, if it should be admitted, might tend to

¹ Cobbett's Parliamentary History, vol. iv. p. 515. ² *Idem*, p. 503.

the interruption of the free course of the laws, and altering of the legislative power, which hath always been acknowledged to reside in the king and the two houses of parliament.”¹

The king complained to the lords that he had received an address from the house of commons that he could not have looked for. “I made them an answer that ought to have contented them; but, on the contrary, they have made me a reply of such a nature, that I cannot think fit to proceed further in the matter without your advice. I have commanded the lord-chancellor to acquaint you with all the transaction.”²

The Cabal were alarmed at the opposition of the house of commons; and each acting according to his view of his private interests, supported or abandoned the king. Lord Clifford supported the Declaration, and, to the amazement of the house, and of the king and the Duke of York, who were present, his arguments were controverted by Lord Shaftesbury the lord-chancellor. The king, forsaken by his chancellor, resolved to follow advice given to him by Louis XIV., to recall the Declaration of Indulgence.³ In a speech to both houses, he promised that what had been done concerning the suspension of penal laws should not be drawn into either consequence or example; and the lord-chancellor, on the following day, announced that the king had caused the original Declaration under the great seal to be cancelled in his presence.⁴

Whilst these proceedings were carried on, both houses agreed to an address to the king, that no popish recusants should be admitted into employments of trust and profit, which was followed by a debate on the growth of popery, and the introduction of a bill, afterwards known as the Test Act,—“for preventing dangers which may happen from popish recusants.” The court tried to rouse the dissenters to oppose the bill; but it is a remarkable proof of the feeling

¹ Cobbett's Parl. Hist., vol. iv. p. 551.

² *Idem*, p. 556.

³ Dalrymple, vol. ii. p. 54.

⁴ Cobbett's Parl. Hist., vol. iv. p. 560.

that prevailed against the papists, that the dissenters concurred in the necessity of finding an effectual security against popery, and preferred to be included in the operation of the law, rather than by claiming an exemption to endanger its success. They may have relied on a bill, which their friends brought into the house of commons in the same session, to give ease to dissenters: it passed the commons, but it was stopped by amendments in the house of lords, and before these could be arranged Charles prorogued the parliament.¹

The Test Act,—nominally against papists, yet, as requiring a sacramental test to be taken as a qualification for office,—affected all classes of religionists except those of the Church of England; and remaining unrepealed until the reign of George IV., it deprived both catholics and dissenters, for many generations, of equal rights with their episcopalian fellow-subjects. It required “all persons, as well peers as commoners, that did then, or should thereafter, bear any office, civil or military, or receive pay, salary, fee, or wages, by patent or grant from the king—or who should have command or place of trust under the king, or should be of his household, or in his service or employment—to take after their admittance to the office, the several oaths of supremacy and allegiance (the latter contained in the statute 3 James I.) in the court of chancery or king’s bench, or in the court of quarter-sessions of the county where they resided; and should also receive the sacrament of the Lord’s Supper, according to the usages of the Church of England, within three months after their admittance, in some public church, upon Sunday, immediately after divine service and sermon. At the time the oaths were taken, the deponent was to produce a certificate of having taken the sacrament, and also to subscribe a declaration that he believed there is not any transubstantiation in the sacrament of the Lord’s Supper, or in the elements of bread and wine, or after the consecration thereof by any person whatsoever.”

¹ Burnet’s Own Time, book iii. Cobbett’s Parl. Hist., vol. iv. p. 561.

Noncompliance with the requisitions of the act rendered the office or employment void.¹

The immediate effect of the Test Act was to deprive the Duke of York of his office of lord high admiral, and Lord Clifford of the staff of lord high treasurer; and Lord Arlington, one of the Cabal, has the credit of having contrived the act, knowing that it would prevent his colleague, Lord Clifford, from continuing in office.²

"The Popish Plot" was the occasion of further severity against the catholics. Charles, in the opening of the seventeenth session of parliament, on the 21st of October, 1677, acquainted them with the discovery of a design against his person by the Jesuits; on which an address was voted to him by the commons, expressing their desire for the preservation of his person, and recommending that the laws should be put into strict force against the papists. The commons engaged in the examination of witnesses, and came to a resolution, that "there had been, and still was, a damnable and hellish plot, contrived and carried on by papist recusants, for murdering the king and subverting the government and protestant religion." A motion was made that the Duke of York should remove himself from the king's person and councils; and before the debate was terminated, the king addressed both houses,—“that he was ready to join in all ways and means to secure the protestant religion; that he would pass any bills they might present to make them safe in the reign of his successor, (if they did not impeach the right of succession, nor restrain his own power, nor the just rights of any protestant successor,) and he desired them to think of some effectual means for the conviction of popish recusants.”³

These events ushered in “An Act for the more effectual preserving of the King's Person and Government by disabling Papists from sitting in either House of Parliament.” “Forasmuch (the preamble states) as divers good laws have

¹ 25 Car. II., cap. 2.

² Dalrymple, vol. i. p. 54.

³ Cobbett's Parliamentary History, vol. iv. p. 1006.

been made for preventing the increase and danger of popery in this kingdom, which have not had the desired effects by reason of the free access which popish recusants had to his majesty's court, and by reason of the liberty which of late some of the recusants have had and taken to sit and vote in parliament,—wherefore, for the safety of the king's royal person and government, it enacted, that no peer of the realm, or member of the house of peers, should vote, or make his proxy in the house of peers, or sit there during debate;—no member of the house of commons should vote, or sit there in any debate, after their Speaker is chosen,—until they should respectively first take the several oaths of allegiance and supremacy, and subscribe and audibly repeat (in the form of words given in the act) the declaration against transubstantiation, and that the invocation or adoration of the Virgin, or any other saint, and the sacrifice of the mass as used in the Church of Rome, are superstitious and idolatrous. The oaths and declaration were required to be taken and made at the table of each house with the Speaker in the chair. Peers or members offending against the act became popish recusant convicts, were disabled to hold any office under the crown or to sit in parliament, to sue in any action or to be guardian or executor, and were declared incapable of any legacy or deed of gift, and should forfeit £500, to be recovered by any common informer.”¹

Charles gave the royal assent to the act on the 30th of November. In the alarm that prevailed in the nation from the popish plot, the parliament had passed a bill for raising the militia, and for keeping it together six weeks,—a measure which alarmed the jealousy of the king. Charles's conduct on this occasion is remarkable for its resemblance to that of his father, Charles I., in defending any inroad on his power over the militia. He pleaded the merit of passing the Test Bill, to excuse himself from passing the Militia Bill, “which,” he said, “put the militia for so many days out of

¹ 30 Car. II., cap. i.

his power; and that he would not comply with, though but for half an hour.”¹

The king prorogued the parliament on the 30th of December, promising that he would prosecute inquiry into the plot, and do all in his power for the security of religion, and the maintenance of it, as then established.²

The reign of Charles II. has been described by Mr. Fox as “the era of good laws and bad government.”³ The proceedings of the government we are not now concerned in examining; of the good laws referred to, we have considered those which abolished the court of wards and established triennial parliaments; we have yet to consider the act for taking away the writ *De Heretico Comburendo*, and above all, the Habeas Corpus Act, which completes Mr. Fox’s list.

The “Act for taking away the writ *De Heretico Comburendo*” simply enacts “that the writ, with all process and proceedings thereupon in order to the executing such writ, or following or depending thereupon, and all punishment by death, in pursuance of any ecclesiastical censures, be from henceforth utterly taken away and abolished.” It saves the jurisdiction of protestant archbishops, bishops, and judges of ecclesiastical courts, and their power to punish in cases of atheism, blasphemy, heresy, or schism, and other damnable doctrines and opinions, by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death.⁴

The Cavalier Parliament was dissolved on the 24th of January, 1678-9; and a general election ushered in a new parliament, which assembled on the 6th of March following. Mr. Edward Seymour was elected Speaker, but was rejected by the king. The commons insisted that their choice was absolute, and voted an humble representation to the king to that effect. Mr. Powle, a member, reported the representation to the king, insisting that it was the undoubted right

¹ Cobbett’s Parliamentary History, vol. iv. p. 1052.

² *Idem*, p. 1074.

³ Fox’s Reign of James II., p. 22.

⁴ 29 & 30 Car. II. cap. 9. See *ante*, p. 155.

of the commons to have free election of their Speaker. The king immediately gave this short answer:—"All this is but loss of time; and therefore I command you to go back to your house, and do as I have directed you." The commons voted a further representation to the king, in which they complained that he had given an answer without having taken time for consideration, or that he would have formed a more favourable opinion of their proceedings. To this the king gave a quick reply, "I will return you an answer to-morrow." The commons assembled to hear the answer, and the lord-chancellor, by the king's order, prorogued the parliament. The prorogation was considered on both sides to have removed a great difficulty, and the commons in the next session chose Serjeant Gregory their Speaker.¹

The first act of the new parliament was a supply; it is only now important, as it declared the law with regard to billeting of soldiers, before so oppressive.² After declaring that by the laws and customs of the realm, its inhabitants cannot be compelled against their wills to receive soldiers into their houses, and to sojourn them there,—it enacted that no officer, military or civil, or other person whatever, should thenceforth presume to place, quarter, or billet soldiers upon a subject or inhabitant of the realm, of any degree, quality, or profession whatever, without his consent; and that it should be lawful to refuse to sojourn or quarter soldiers, notwithstanding any command, order, warrant, or billeting whatever.³

The Habeas Corpus Act (passed in the same parliament) is supposed to shed a peculiar lustre on the reign of Charles II. But we have seen that as arbitrary imprisonment was from the time of Magna Charta directly contrary to the statute law of the realm, so the remedy by writ of habeas corpus was not much less ancient, and was applied as the ordinary course of proceeding in several distinguished cases of impri-

¹ Cobbett's Parliamentary History, vol. iv. pp. 1091-1112.

² See *ante*, p. 279.

³ 31 Car. II., cap. 1, A.D. 1679.

sonment by the crown.¹ The act of Charles II. is therefore not an original but a remedial law: it extended the remedy, but did not originate the right of the subject, nor did it enlarge the inherent principle of personal liberty which Magna Charta declared. Its title is, "An Act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas." It extended the power of granting the writ to the lord-chancellor and to all the judges of the superior courts of common law, as well in vacation as in term time; and it declared two principles of great importance, as protecting the subject from prolonged imprisonment:—first, that persons committed for treason or felony, and applying to the court to be brought to trial, must be tried in the following term or sessions after their application,—unless it appear that the king's witnesses could not be produced—or they must be discharged on bail, and if not tried in the next succeeding term or sessions, they must be discharged from imprisonment;—secondly, that no inhabitant of England or Wales shall be sent a prisoner out of England, to any place within or without the king's dominions.

¹ See *ante*, pp. 59 n., 277, 306.

² 31 Car. II., cap. 2, A.D. 1679. Its provisions will be detailed in the Second Part of this work.

CHAPTER XVIII.

JAMES II.

1685-1688. Reigned 3 years.

Exclusion Bill.—Whigs and Tories.—James's Speech to his Council.—Parliament.—Revenue settled on him for life.—His Designs to restore Popery and Arbitrary Government.—Standing Army.—Popish Officers.—Court of High Commission.—Declaration of Indulgence.—James appoints Papists to Offices in Church and State.—Requires the Bishops to obey his Order in Council.—Seven Bishops tried and acquitted.—Invitation to William and Mary.—William's Declaration.—A Convention called.—William and Mary accepted the Throne.—Resolution of the Nature of the Government passed.—Declaration of Rights.—William and Mary proclaimed.—Coronation Act.—Act of Settlement.

THE contest between prerogative and freedom was brought to a conclusion in the reign of James II., who ascended the throne on the 6th of February, 1685, on the death of his brother Charles. His brief reign, if we estimate it by the events which resulted from it, is perhaps the most important in the history of the constitution. He was a papist of the sternest bigotry. He was so confident in his divine right, as king, that he seemed blinded to any danger from the open profession of the proscribed religion; and in reliance on that right, and on the passive obedience of the people, he violated almost every fundamental law. The simple narrative of his illegal acts furnished an ample justification of his removal from the throne; and the re-affirmation and parliamentary declaration of the violated laws formed the chief part of the code of rights and liberties deemed necessary for a permanent con-

stitutional government. The Declaration of Rights which followed his abdication was founded, not upon abstract or theoretical principles of government, but upon what, in legal phrase, may be called James's *overt acts* of treason to the nation.

There had been in the reign of Charles II. so much dislike and even dread of James's succession to the throne,—a dread increased by the panic spread by the popish plot,—that a large party in the nation endeavoured to exclude him from the succession, on the ground of his being a papist. The house of commons passed a bill for that purpose, and for banishing him from the kingdom;—a fate from which he was only saved by a majority in the house of lords. The Exclusion Bill long and deeply agitated the nation and the government; and when James ascended the throne the people had become divided into two parties, under the then new but now familiar names of Whigs and Tories. These had their origin in nicknames fastened on the respective supporters and opponents of the Exclusion Bill. Those who were inimical to popery,—as well on religious grounds as from the encouragement it gave to the doctrines of divine right and passive obedience, but who were at the same time favourable to religious toleration amongst protestant sects,—were called Whigs; whilst those who, holding those doctrines as of irremovable obligation, although they supported the exclusive authority of the Protestant Established Church, would not concur in depriving even a professed papist of his right of succession to the throne,—were called Tories.

The laws for the exclusive establishment of the Church of England were clear and defined. Papists and protestant dissenters were disabled from holding any office, civil or military, and were liable to severe penalties for absenting themselves from their parish church; whilst any one becoming reconciled to the Church of Rome, was guilty of high treason. Charles II. had on several occasions endeavoured to produce some alleviation of these penal laws; but he was told by parliament that he had no power of inter-

ference, and that no alteration could be made but by an act of parliament. Those laws, therefore, the king of England was bound to conform to, both in his own person and in his government.

James felt the force of these obligations on his accession. In his first address to his privy council he said he had been reported to be a man for arbitrary power; but that was not the only story that had been made of him, and he should make it his endeavour to preserve the government in church and state, as it was then established. "I know too," he said, "that the laws of England are sufficient to make the king as great a monarch as I can wish; and as I shall never depart from the just right and prerogative of the crown, so I shall never invade any man's property. I have often heretofore ventured my life in defence of the nation, and I shall still go as far as any man in preserving it, in all its just rights and privileges."¹ But he made it known, after his brother's funeral, that he had died a Roman Catholic; and James soon afterwards appeared publicly at mass.

Parliament assembled on the 19th of May, 1685, by virtue of proclamations issued, as well for the meeting of parliament, as for levying, on James's sole authority, the customs and duties which constituted the revenue of the late king, but which expired at his decease.² The house of commons contained a large majority of adherents of James,—the effect of changes made in the last reign in the charters of the corporations of the parliamentary boroughs, for the purpose of bringing them under the influence of the crown. The king opened the session on the 22nd of May, and renewed the declaration he had made to the privy council. The house of commons without delay unanimously voted to him for his life the whole revenue settled on the late king. Edward Seymour, although of the tory party, and a strenuous opposer of the Exclusion Bill, endeavoured to induce the commons to delay the vote; for the elections

¹ Cobbett's Parliamentary History, vol. iv. p. 1342.

² Fox's Reign of James II., p. 89.

had been carried on under so much court influence, and in other respects so illegally, that it was the duty of the house to ascertain who were the legal members before they proceeded to important business; and more especially as the laws and religion of the nation were in evident peril.¹ But the parliament did not delay; and when, a few days afterwards, the Speaker presented for the royal assent the bill granting the revenues pursuant to the vote, he took the merit of giving what the king had demanded, with as much speed as the forms of parliament would admit; and without appending to it any bill for the security of religion,—although it was dearer to them than their lives,—or any appropriating or tacking clauses.² The same parliament also granted to James for his life,—as a supply for the navy,—the imposition on wines and vinegar, which had been received by Charles II., and a further sum of £400,000, towards the extraordinary expenses incurred by the rebellion of the Duke of Monmouth. Thus, in disregard of one of the first constitutional principles, James was rendered independent of parliament for supplies, unless in case of war, for the remainder of his reign.

The king, thus provided and unrestrained, proceeded to carry out the ardent objects of his life, the restoration of the ascendancy of the Roman Catholic religion, and the absolute and unshackled power of the monarch. The history of his reign shows that James, in the prosecution of his designs, was restrained by no law—by no compassion for those whom he opposed or oppressed—and by no consideration of his duties as king, under a constitutional government. To assist him in these objects he entered into secret arrangements with the King of France; and, notwithstanding the liberality of parliament, accepted from him large sums of money,—that monarch receiving his recompense in the betrayal of the interests of the English nation.

The first open design of James was to obtain the sanc-

¹ Fox's *Reign of James II.*, p. 139.

² Cobbett's *Parliamentary History*, vol. iv. p. 1359.

tion of parliament for the maintenance of a standing army, and their approval of his having appointed popish officers to serve in the army during Monmouth's rebellion, without having taken the tests against popery. The parliament met in a new session on the 9th of November, after the suppression of the rebellion. James, in his speech, reflected on the insufficiency of the militia. He hoped "everybody would be convinced it is not sufficient for such occasions; and that there is nothing but a good force of well-disciplined troops in constant pay, that can defend us from such as either at home or abroad are disposed to disturb us." His concern for the peace and quiet of his subjects, he said, made it necessary to increase the number to the proportion he had done; and to support the charge of keeping such a body of men on foot, he asked for a supply. "Let no man take exception," he added, "that there are some officers in the army not qualified, according to the late tests, for their employments. The gentlemen, I must tell you, are most of them well known to me; and having formerly served with me on several occasions, and always approved the loyalty of their principles by their practice, I think them now fit to be employed under me; and I will deal plainly with you, that, after having had the benefit of their service in such a time of need and danger, I will neither expose them to disgrace, nor myself to the want of them if there should be another rebellion to make them necessary to me."¹

The proposal for a standing army, and for a violation of the test acts, changed the obsequiousness of the parliament, and roused an opposition partaking of the spirit of former parliaments. The court party carried a resolution for a supply, but with the addition that a bill be brought in to render the militia more useful—equivalent to a declaration against a standing army; and the commons afterwards voted an address, in which they represented to the king that the officers in the army, who had not complied with the tests, could not by

¹ Cobbett's Parliamentary History, vol. iv. p. 1370.

law be capable of their employments, and that their incapacities could not be taken away but by act of parliament.”¹ They said they would pass an act to indemnify them from the penalties on this occasion, and they besought the king to give such directions as that no apprehensions or jealousies might remain in the hearts of his subjects.² Disapprobation of the king’s proceedings spread to the house of lords, extending even to the bench of bishops; and James perceiving that resolutions would be passed disapproving of his proceedings, prorogued the parliament, sacrificing even the vote for the supply, which had not been perfected by an act. Parliament was kept in existence by repeated prorogations for about a year and a half, but without holding a session, and no parliament assembled again during this reign.³

The high commission court, established by Elizabeth, was abolished by a statute of the Long Parliament, and its abolition was confirmed by a statute of Charles II., which also declared that no similar court should be constituted.⁴ Yet in contempt of those laws, a court was erected called the Court of Commissioners for Ecclesiastical Causes, to which, without any other authority than his own, James gave summary and arbitrary jurisdiction over all ecclesiastics, and of which he made his infamous lord-chancellor, Jeffreys, perpetual president. The Bishop of London, who had offended the king by the part he had taken in parliament, was the first person summoned before the new court, by which he was suspended from his office.

In exercise of his assumed prerogative to dispense with the statute law, James published a declaration of indulgence, of the most daring character. He declared “that the exe-

¹ Cobbett’s Parl. Hist., vol. iv. p. 1379.

² *Idem*, p. 1379.

³ On the 29th of October, 1685, Barillon, the French ambassador, writes to his court:—“He (James) added, that his design was to make the parliament revoke the Test Act and the Habeas Corpus Act; one of which was the destruction of the Catholic religion, and the other of the royal authority.” (Dalrymple, Appendix, vol. ii. p. 103.)

⁴ See *ante*, p. 218.

cution of all, and all manner of penal laws in matters ecclesiastical, should be immediately suspended ; and he gave free leave to all his subjects to serve God their own way, either in public or private, provided they took special care that nothing was preached or taught tending to alienate the people from his government. He declared that the oaths of allegiance and supremacy, as also the several tests and declarations of 25 & 30 Charles II., should not for the future be required to be taken by any person, who was or should be employed in any place of trust ;—and that it was his pleasure and intention to grant his royal dispensations under the great seal to all persons so employed, who should not take the said oaths. He gave free pardon to all nonconformists, recusants, and other his loving subjects, for all crimes and things committed against the penal laws.”¹

Under the authority of this declaration, (which, however much we may now admire its principles, was clearly in derogation of law, and opposed to the feelings of his people,) James took jesuits into his service, and he appointed papists to the highest offices of the state, and to commands in the army and navy. He went the length of appointing Roman Catholic priests to ecclesiastical offices in the universities of Oxford and Cambridge ; and when his nominees were refused, he deprived the heads of the universities of their dignities. He sent an extraordinary ambassador to the pope ; although any intercourse with that pontiff was, by the laws of England, high treason. He also gave audience to a nuncio from the pope. Four popish bishops were publicly consecrated in the royal chapel, and the popish regular clergy attended his palace in the habits of their order. He appointed a Roman Catholic to be of his privy council, and altered the privy-councillor’s oath, by expunging the declaration against foreign prelates.

In April, 1688, James renewed his declaration for liberty of conscience, and issued an order in council, requiring the bishops to send copies of it to all their clergy, and to order

¹ Cobbett’s Parliamentary History, vol. iv. p. 1388.

them to read it on two several Sundays in time of divine service. The archbishop and six bishops petitioned the king to lay before him the reasons that determined them not to obey the order in council. They were admitted to his presence. James insisted upon being obeyed. They retired with the words, "The will of God be done." They were committed to the Tower, and an information presented against them for a misdemeanour, on which they were afterwards brought to trial.

The trial of the seven bishops is a memorable instance of the bigotry, injustice, and cruelty of James, and of the corrupt subservience of his judges. But this wicked scheme failed of success. The bishops were triumphantly acquitted. Universal joy spread throughout the nation. James was informed of the acquittal when he was reviewing at Hounslow the standing army that he unconstitutionally maintained. Whilst partaking of refreshment in the commander's tent, he heard the shouts of the soldiers, and he inquired the cause. "Nothing," was the reply, "but the joy of the soldiers that the bishops are acquitted. "Do you call that nothing?" said the king; "so much the worse for them."

Time was not allowed to James for the fulfilment of the vengeance these words implied. The nation's power of endurance was at an end; the most conscientious believers in the doctrine of the indefeasible right of kings, felt unable to justify the king's conduct, and many of the tory aristocracy joined the whigs to remove James from the throne, and to place there, in his room, William, Prince of Orange, and his consort the Lady Mary, daughter of James,—both protestants, and the prince the head of the protestant interest in Christendom. An invitation was sent to them by a large number of the peers, both spiritual and temporal, and of the leading men amongst the commons; and William published a declaration, accepting the invitation, with the view, as he stated, "to get a free parliament assembled, which might secure the national religion and liberty, under a just and legal government for the future." James prepared to defend his

throne, but when William arrived, supported by an army, James, with his queen and infant son (born at this important juncture), fled to France.

The throne being vacant by the flight of James, the lords spiritual and temporal assembled in their house, to about the number of ninety, and William desired that all persons who had been members of the house of commons in the reign of Charles II., (for the assembling of James's parliament might be considered as a recognition of his continued authority,) with the lord mayor and aldermen of London, and fifty of the common councilmen, would meet at St. James's, on the 26th of December, 1687.

One hundred and sixty members, with the mayor and corporation, met accordingly, and they adopted an address to the Prince, which the lords had previously voted (and which was subscribed by about ninety peers), humbly desiring him to take upon him the administration of public affairs, and the disposal of the revenue, until the meeting of a convention to be called. They further humbly desired him to cause letters to be written, subscribed by himself, to the lords spiritual and temporal, being protestants, and to the several counties, universities, cities, boroughs, and Cinque Ports,—the letters to the counties to be directed to the coroners or clerks of the peace; of the universities, to the chancellors; and of the cities and boroughs, to the chief magistrates,—directing them to choose, within ten days, such a number of persons to represent them, as were of right to be sent to parliament. They were required to meet at Westminster, on the 22nd of January, 1688.¹

The convention met accordingly, and both houses agreed to an address, that the Prince would take upon himself the government, which by a message he consented to do. The commons next proceeded to settle the basis of the future monarchy. The converse theory to that of the divine right of kings is, that kings reign by virtue of a contract, theoretically assumed to have been made between them and the

¹ Cobbett's Parliamentary History, vol. viii. p. 24.

people at the origin of the government,—a theory which implies responsibility on the part of the king, and a remedy in the people if the king violate the assumed contract. The first step of the house of commons, in which the whig party was predominant, was to assert that principle in the following resolution :—

“That King James II. having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people, and having, by the advice of jesuits and other wicked persons, violated the fundamental laws, and withdrawn himself out of the kingdom, has abdicated the government, and that the throne is thereby vacant.”

The resolution was the work of only one day, and it passed without a division of the house. It was carried to the lords, for their concurrence, on the 28th of January, by Mr. Hampden, the grandson of him, of the same name, who first shook the prerogative of the Stuart kings.

The lords took the resolution into consideration in a committee of the whole house, and afterwards communicated to the commons that they concurred in it, with two amendments. Instead of ‘abdicated,’ they would have ‘deserted’ put in; and they would have the words, “and that the throne is thereby vacant,” left out. Conferences followed, the second being a free conference, in which the resolution was debated, orally, by the managers of the respective houses. The lords, on the 7th of February, signified to the commons that they had agreed to the vote without any alterations.¹

The crown was settled, by both houses, on William and Mary, jointly during their lives, and on the survivor; the administration of the government being committed to William alone during his life. The principles of the future government were embodied in the celebrated DECLARATION OF RIGHTS, which was presented to William and Mary, seated on the throne, at Whitehall, in the presence of both

¹ Cobbett's Parliamentary History, vol. viii. p. 198.

houses of parliament, by the Speaker of the house of lords, on the 13th of February, 1688. On that day they became, and were proclaimed, King and Queen of England, deriving their authority from the joint declaration of the lords and commons, and holding the crown on the principles and subject to the limitations prescribed in the Declaration or Bill of Rights.

The convention on the same day passed an act¹ which declared that the lords spiritual and temporal, and commons, convened at Westminster on the 22nd of January, 1688, and there sitting on the 13th of February following, were the two houses of parliament, notwithstanding any defect of form. It repealed the old oaths of allegiance and supremacy required to be taken by members of the houses of parliament, and substituted a new oath of allegiance to King William and Queen Mary, and acknowledging their supremacy. It also passed an act for establishing the coronation oath.² Thus that great event in our history, and change in the constitution and dynasty,—THE REVOLUTION,—was complete. In the second session of the same parliament, held in 1689, an act was passed “declaring the rights and liberties of the subject, and settling the succession of the crown.”³ In that act the Declaration of Rights is recited at length, the acceptance of the crown by William and Mary is recorded, and the descent of the crown is settled in the manner before described. We shall hereafter notice the principles laid down in the Declaration of Rights, which continue to this day, as fundamental principles of the constitution.

Queen Mary died in 1694, and the son of her sister Anne having also died, all hope was lost of the succession to the crown taking place in the course provided by the Bill of Rights. In 1704, therefore, the Act of Settlement was passed.⁴ James II. was then dead, leaving a son, called in England the Pretender. This act excluded him from the throne, and entailed the crown, in default of issue or

¹ William and Mary, sess. 1, cap. 1.

² *Idem*, cap. 6.

³ William and Mary, sess. 2, cap. 2. ⁴ 12 & 13 William III., cap. 2.

William or Anne, upon Sophia, Electress of Hanover, granddaughter of King James I., and the heirs of her body, *being protestants*. This act added certain fundamental principles to the constitution, which will be hereafter noticed. Under its limitations the Hanover family came to the throne, through whom it has descended to our present most excellent and constitutional queen Victoria.

The Revolution terminated the contest between prerogative and freedom, and settled the basis of a limited monarch and constitutional government. From that period the principles laid down in the Bill of Rights have never been disputed, although in the changes of administration, and under the influence of party spirit, they may sometimes have been departed from. They have, however, in our times, obtained a solidity which is unassailable; and they have been confirmed and added to by, for the most part, a course of wise, enlightened, and impartial legislation, by which the security of the throne has been increased, and the rights and liberties of the people maintained and enlarged.

THE ENGLISH CONSTITUTION.

PART II.

ITS PRESENT STATE.

CHAPTER I.

THE KING, OR QUEEN REGNANT.

Monarchy the Basis of the Constitution.—Supreme Executive Power.—Prerogatives.—Coronation Oath.—Declaration of Rights.—Act of Settlement.—The King must act through Ministers.—Rise of Ministerial Responsibility.—The Cabinet Council.—The Privy Council.—Parliamentary Government.—Selection of Ministers.—Power to suspend Laws.—Prerogative in relation to Parliament.—Mode of Summoning Parliament.—Peers of Scotland.—Prorogation.—Opening of Parliament.—Mode of giving Royal Assent to Bills.—Prerogative of Rejecting Bills.—Selection of Ministers.—Civil List.—Descent of the Crown.—Demise of the Crown.—Allegiance of the People.—Royal Children.

THE basis of the English Constitution is a Monarchy which has had a duration of upwards of a thousand years. Never absolute, its power has been gradually diminished in the course of its transmission to our days, and brought under the control of constitutional laws and principles, and under the check of institutions of co-ordinate authority; but the affairs of the government, both administrative and judicial, are conducted in the name of the sovereign, who is presented to foreign nations as invested with the full power of the kingdom. The title of the reigning sovereign has been

lately expressed in the language of truth, as "Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, and of the Colonies and Dependencies thereof in Europe, Asia, Africa, America, and Australasia Queen, Defender of the Faith."¹

The Revolution settled the principle on which the monarchy is constituted. The maxim of hereditary indefeasible right was renounced in a free parliament, which declared the power of the crown to be derived from a contract with the people. Allegiance and government according to law, are, therefore, reciprocal and mutually dependent rights; and William III. accepted the throne, not only on a theoretical but also on an express contract with the people, establishing these and other fundamental principles and rights as the primary elements of the constitution. From that time, therefore, and as the result of the contests described in the First Part of this work, closed by the Revolution, the direct personal legislative power of the king has been diminished, even to privation; but he still retains a share in legislation, by the consent which it is necessary he should give to the enactment of every law. He has also retained, and in him is vested, the SUPREME EXECUTIVE POWER. This combination of executive and legislative power in the king's person, constitutes him, as well in fact as in theory, the highest authority in the state; whilst, as representative of the ancient monarchy, he is also the person of the highest rank.²

¹ Indian Proclamation, 1848. Henceforth the treatise is written with reference to a king, as more respectful to her Majesty, and in order to adopt phraseology in accordance with the acts of parliament and public documents.

² "In some commonwealths where the legislative is not always in being, and the executive is vested in a single person, who has also a share in the legislative; there that single person, in a very tolerable sense, may be called supreme; not that he has in himself all the supreme power, which is that of law-making, but because he has in himself the supreme execution from which all inferior magistrates derive all their several subordinate powers, or at least the greatest part of them; having also no legislative power superior to him, there being no law to be made without his consent." (Locke on Government, ch. 13.)

The discharge of his duties as the supreme executive magistrate requires that the king should be invested with high dignities and prerogatives, constituting him the head and chief of the several departments of the executive administration. He is, therefore, the SUPREME MAGISTRATE; and as such he is the fountain of justice, and general conservator of the peace of the kingdom. He appoints the judges and magistrates, who administer justice in his name. He has the PREROGATIVE OF MERCY—the power of pardoning criminals convicted by law. He is the GENERALISSIMO, or first in command of the army and navy; and in that capacity he raises the national armies and fleets. He is the FOUNTAIN OF HONOUR; and has the sole power of creating peers, and of conferring titles, whether of nobility or of inferior rank. He is the SUPREME HEAD OF THE NATIONAL CHURCH; and in that capacity he appoints the archbishops and bishops, and convenes the convocation of the clergy. He has the sole power of coining money. As KING, he is the representative of the imperial dignity of the realm, in its relations with foreign nations; he sends and receives ambassadors, contracts alliances, and makes peace or war. He is a constituent part of the parliament, which he alone convokes, prorogues, and dissolves.¹

¹ See Blackstone's Commentaries, vol. i. ch. 7. The constitution of the United States invests the President, as depositary of the executive power, with similar functions:—"He is commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He has power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. He has power, by and with the advice of the senate, to make treaties, provided two-thirds of the senators present concur; and he nominates, and, by and with the consent of the senate, appoints ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not otherwise provided for in the constitution, and established by law; but the congress may by law vest the appointment of such inferior officers in the president alone, in the courts of law, or in the heads of departments. He may, on extraordinary occasions (that is, at other times than on the first Monday in December in every year,

But these prerogatives must be exercised according to law. This fundamental principle is expressly declared by the "act for declaring the rights and liberties of the subject, and settling the succession of the crown,"¹ which enacted "that all and singular the rights and liberties asserted and claimed in the declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, judged, deemed, and taken to be; and that all and every the particulars thereof, shall be firmly and strictly holden and observed, as they are expressed in the declaration, and all officers and ministers whatsoever shall serve the king according to the same."² The same principle was confirmed by the "act for the further limitation of the crown, and better securing the rights and liberties of the subject," called the Act of Settlement,³ which declared "that the laws of England are the birthright of the people thereof, and all the kings and queens who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same."⁴

This obligation is enforced on the conscience of the sovereign by the Coronation Oath, by which the sovereign solemnly promises and swears "to govern the people of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same;—to the utmost of his power to cause law and justice in mercy to be executed in all his judgments;—

which is fixed by the constitution for the annual meeting of congress), convene both houses, or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States." (Constitution of United States, art. 2.)

¹ 1 William and Mary, sess. 2, cap. 2, A.D. 1688.

² *Idem*, s. 6.

³ 12 & 13 William and Mary, 3, cap. 2, A.D. 1700.

⁴ *Idem*, s. 4.

to the utmost of his power to maintain the laws of God, the true profession of the Gospel, and the protestant reformed religion established by law; and to preserve to the bishops and clergy of the realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them, or any of them.”¹

The constitution has not, however, trusted to these general principles alone. The “act for declaring the rights and liberties of the subject” declares what the sovereign may *not* do in violation of the religion, rights, and liberties of the people. This act was passed to give the Declaration of Rights delivered to William and Mary on their acceptance of the crown, on the 13th of February, 1688, the force of law. It recites that important and memorable constitutional document as follows:—

“Whereas the late King James II., by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom,

“1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without the consent of parliament.

“2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

“3. By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes.

“4. By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament.

“5. By raising and keeping a standing army within this

¹ 1 William and Mary, cap. 6. The sovereign is also required by the Act of Union of England and Scotland to bind himself to maintain the presbyterian church government in Scotland. Scotch Act, 5 Anne, cap. 6; Act of Union, 5 & 6 Anne, cap. 8.

kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

“6. By causing several good subjects, being protestants, to be disarmed at the same time when papists were both armed and employed, contrary to law.

“7. By violating the freedom of election of members to serve in parliament.

“8. By prosecutions in the court of king’s bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

“9. And whereas of late years partial, corrupt, and unqualified persons, have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

“10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

“11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

“12. And several grants and promises made of fines and forfeitures, before any conviction or judgment against the persons upon whom the same were to be levied.

“All which are utterly and directly contrary to the known laws and statutes and freedom of this realm.”

The declaration then recites the abdication of the throne by James II., the summoning of the convention held on the 22nd of January, 1688, and that the lords spiritual and temporal, and commons, did in the first place, (as their ancestors in like case had usually done,) for the vindicating and asserting their ancient rights and liberties, declare:—

“1. That the pretended power of suspending of laws, or the execution of laws, by royal authority, without consent of parliament, is illegal.

“2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

“3. That the commission for erecting the late court of

commissioners for ecclesiastical causes, and all other courts and commissions of like nature, are illegal and pernicious.

“4. That levying money for or to the use of the crown by pretence of prerogative, without grant of parliament, for longer time, or in any other manner than the same is or shall be granted, is illegal.

“5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

“6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

“7. That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law.

“8. That election of members of parliament ought to be free.

“9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

“10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

“11. That jurors ought to be duly empanelled and returned; and jurors which pass upon men in trials for high treason, ought to be freeholders.

“12. All grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

“13. And for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.”

The act confirmed the Declaration of Rights, and excluded from the throne “all persons who should be reconciled to, or should hold communion with the see or church of Rome, or should profess the popish religion, or should marry a papist.” In such cases “the people should be absolved from their allegiance, and the crown should descend to the successor.”

The act also abolished the dispensing power, it being declared that "no dispensation by *non obstante*, of or to any statute, should be allowed, but should be void and of no effect, except a dispensation be allowed of in such statute."

The Act of Settlement also put the sovereign under restrictions in the nature of fundamental principles. These additional restrictions were deemed necessary by parliament, as provisions in the event of the crown becoming vested in a prince not a native of the kingdom.

The crown was settled by the Declaration of Rights, on William and Mary, for their joint lives, and the life of the survivor, and the heirs of Mary; and in default of such issue, on the Princess Anne of Denmark, afterwards Queen Anne, and the heirs of her body.¹ In 1700 Mary was dead without leaving issue, and the Duke of Gloucester, the only issue of the Princess Anne of Denmark, was also dead. These circumstances called for a new settlement of the crown; and it was made by the act usually called "the act of settlement."² By that act the Princess Sophia, electress and duchess-dowager of Hanover,—daughter of Elizabeth, late Queen of Bohemia, and granddaughter of James I.,—was declared to be the next in succession to the throne in the protestant line; and after the death of William, and of the Princess Anne of Denmark, and in default of issue of Anne and William, the crown was settled on the Princess Sophia, and the heirs of her body, *being protestants*.

By the course of events the crown passed to her son George I., then elector of Hanover, and the wise foresight of our ancestors in the provisions made, became manifest when the throne actually passed to a king, not a native of the kingdom, and being the sovereign of another country. The provisions which are declared to be "for securing our religion, laws, and liberties," are as follows:—

¹ 1 William and Mary, sess. 2, cap. 2, s. 8.

² 12 & 13 William III., cap. 2, A.D. 1700, *ante*, p. 423. An act for the further limitation of the crown, and better securing the rights and liberties of the subject.

“Whosoever shall hereafter come to the possession of this crown, shall join in communion with the Church of England, as by law established.

“In case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

“No person who shall hereafter come to the possession of this crown shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament.¹

“From and after the time that the further limitation by this act shall take effect,² all matters and things relating to the well governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.³

“After the limitation shall take effect as aforesaid, no person born out of the dominions of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen), except such as are born of English parents, shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands or tenements or hereditaments from the crown to himself, or to any other or others in trust for him.

“No person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.⁴

¹ This provision was repealed by 1 Geo. I., cap. 51.

² In other words, from the time when the Princess Sophia, or any of her descendants shall come to the throne,—viz. from the reign of George I.

³ This clause was repealed by 4 Anne, cap. 8, s. 24.

⁴ Repealed by 4 Anne, cap. 8, s. 25, and new enactments by 6 Anne, cap. 7. See *post*, Chap. III.

"After the limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both houses of parliament, it may be lawful to remove them.

"That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament."

The Declaration of Rights and the Act of Settlement may be considered as the complement of Magna Charta and the Petition of Right, in declaring and fixing the prerogatives of the crown, and the rights of the people in relation to the crown. Since the Act of Settlement there has been no statute expressly directed to curb the royal prerogative; but the executive power of the crown has been diminished by the growth of the power of parliament, and especially of the house of commons, and the establishment of the system of parliamentary government. That system has silently grown up since the Revolution, and at its root lies the maxim—that all the acts of the crown must be advised and transacted by ministers responsible to parliament.

The king was always protected from responsibility by force of the ancient maxim, "that the king can do no wrong;" but he did not, therefore, consider himself precluded from personally acting in the government independently of his ministers.¹ William III., on his accession, placed the internal government of the country under the authority of ministers, but he reserved to himself the direction of foreign affairs, not associating with him, practically or nominally, any minister.² The fourth clause in the Act of Settlement is directed against the continuance of that practice, and seems to contain the first expression of the

¹ The principle of ministerial responsibility has not been imported into the constitution of the United States. The president executes the sovereign powers of government, "with the advice and consent of the senate." He may be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours." (Constitution, art. 2.)

² Macaulay's History, vol. iii. p. 14 *et passim*.

more restrictive doctrine. It declared that, after the accession of the House of Hanover, all matters and things relating to the well-government of the kingdom, which were properly cognizable in the privy council by the laws and customs of the realm, should be transacted there; and all resolutions taken thereupon should be signed by such of the privy council as should advise and consent to the same. Another clause,—with the intention, as it would seem, that the privy council should act under a full sense of responsibility to the house of commons,—declared that no pardon under the great seal should be pleadable to an impeachment by the commons. The effect of the former clause would have been to force George I., as the first prince of the House of Hanover who ascended the throne, to carry on his government under the direction of his privy council exclusively; but it was repealed before his accession.¹

The principle of responsibility to the house of commons produced, in the reign of William, a change in the administration of the executive government, by the formation of a more combined and exclusive ministry than the privy council afforded, consisting of a select number of privy councillors, nominated by the king, and called the Cabinet Council. The steps by which the change was effected have been traced by an eminent historian.² It may be added, that the principle of responsibility may have made it necessary, for the safety and protection of the king's advisers, that they should possess more entire and exclusive control over the measures of government than would be attainable if the king were allowed to retain part of the administration,

¹ 4 Anne, cap. 8.

² Lord Macaulay observes, "that this noiseless revolution, for it was no less, began about the close of 1693, and was completed about the close of 1696, when everybody could perceive that all the principal servants of the crown were whigs, closely bound together by public and private ties, and prompt to defend one another against every attack; and that the majority of the house of commons was arrayed in good order under those leaders, and had learned to move, like one man, at the word of command." (*History*, vol. iv. p. 437.)

or than was practicable in a body so numerous as the privy council, which was also wanting in unity of political opinion. To the cabinet council, called also the Ministry, or the Government, all the duties of the executive government are confided. It is formed of statesmen nominated by the king, and appointed by letters-patent under the great seal; and it consists (generally without exception) of members of the houses of parliament, of the same political views, and of the party at the time prevalent in the house of commons. Their meetings are secret and confidential, and are held without the presence of the king.¹

The cabinet ministers are not necessarily a fixed number. The ministry formed in 1859 was composed of the chief or Prime Minister, as First Lord of the Treasury; the Lord Chancellor, Lord President of the Council, Chancellor of the Exchequer, Lord Privy Seal, five Secretaries of State,—for the home, foreign, war, and colonial departments, and for India,—First Lord of the Admiralty, Postmaster-General, President of the Board of Trade, President of the Poor Law Board, Chief Secretary for Ireland, and Chancellor of the Duchy of Lancaster. Other offices of the government, and the offices of Secretary and Under-Secretary to the various departments, are filled by noblemen and commoners, “not of the cabinet;” and there are, besides, the Attorney-General and Solicitor-General, and the Lord Advocate of Scotland, as the law-officers of the crown.

The duties of the cabinet ministers are as various as the affairs of this great kingdom, with its numerous colonies and dependencies, and comprehend all the business of the executive government. Each minister manages the ordinary business of his own department without recourse to the others; but all matters out of the ordinary course, especially those likely to be questioned in parliament, are considered by the whole cabinet. The ministers regulate the

¹ “The highly beneficial custom of holding cabinet councils without the presence of the sovereign, arose from George I. not knowing English.” (Lord Grey on Parliamentary Government, p. 10.)

government at home by the control they possess over all magistrates and public functionaries ; they conduct treaties and negotiations with foreign nations ; they appoint the governors of, and exercise the authority of the crown over the colonies ; they determine the force to be maintained in the army and navy ; they prepare and lay before the house of commons annual estimates of the national expenditure, which they afterwards induce parliament to vote, and to provide for by a sufficient revenue. It is their duty to bring under the consideration of the legislature such laws and measures as they deem requisite for the safety and social improvement of the nation. They must be prepared also to explain and defend, in their places in parliament, the policy they have adopted in their negotiations or correspondence with foreign nations, as well as the measures they have advised or brought forward at home ; and the minister who is for the time the leader of the house of commons, is expected to take the conduct of the public business of the house, and to advise the course of proceeding when novel and anxious circumstances arise. They also advise the king on all matters relating to the disposal of the patronage of the crown ; which it is generally considered is exercised for the benefit of the party to which the ministers belong.¹

Public measures advised by the cabinet council, when they require the direct sanction of the king, under his sign-manual, or to be enforced by proclamations and orders, are brought before the privy council, where the king presides. The privy councillors are appointed by the king, there being no other qualification than that they be natural-born subjects, and take the oath of fidelity and secrecy. The appointment is often given as an honorary reward for valuable services, or to qualify for the discharge of duties only performed by privy councillors. No privy councillor attends

¹ Lord Macaulay observes " that in parliament the ministers are bound to act as one man on all questions relating to the executive government. If one of them dissents from the rest on a question too important to admit of compromise, it is his duty to retire." (History, vol. iv. p. 435.)

the meetings of the privy council unless he is specially summoned ; so that no opposition can be made there to the measures advised by the cabinet.

When the cabinet ministers resign, the sovereign then stands alone, without any advisers known to the constitution, to exercise the prerogative of selecting new ministers. The party from which the selection is to be made is, however, usually indicated by the circumstances which occasioned the retirement of the old ministers,—generally the consequence of defeat in the house of commons. The leader of the Opposition is usually sent for by the sovereign, and empowered to undertake the formation of a ministry, and to lay the names of the parties proposed for the several offices before the king for his approval. But here the sovereign's predilections or personal wishes may come into operation ; and he may use the influence of his high position, and the value attached to his notice and regard, to sustain the old ministers, or to select those to whom he is most favourable. It is, however, generally true that under the system of parliamentary government the choice of the sovereign is restricted, by the necessity of selecting ministers who are able to obtain and preserve majorities in the house of commons.

The working of this system will be attempted to be explained when we treat of the parliament. At present we will only notice its effect on the monarchy and the people. Its value in bringing the monarchy into unison with the freedom demanded and obtained by the other institutions of the government and by the people, cannot be too highly estimated. It has changed the vague, precarious, and irresponsible authority of the ancient monarchs for an executive council, nominated by the monarch from the peers and representatives of the people, but acting under the direct influence of the house of commons, and accountable there for all its proceedings. It has relieved the king from the burden, and from the moral as well as actual responsibility, of directing or conducting the state affairs ; and whilst he retains his high position as chief of the state, and the power

of impressing his views of government on his ministers when in office, and of selecting new ministers when a change is required, he is not involved in the fluctuating fortunes of the rival statesmen who from time to time become his servants as ministers of the crown. With respect to the people, it has opened the road to the highest offices of the state to the ambition of all who can raise themselves to distinction in the house of commons; and thus it places political power of the highest order in the most eminent and distinguished of the people themselves.

Although the constitution has rendered the king and his ministers subject to the laws, it recognizes—although it does not by express law permit—a relaxation of the rigid rule of law, where close adherence to it would lead to great public inconvenience or injury. An extraordinary power is, therefore, vested in the sovereign and his ministers, in such cases and in critical times, to depart from the provisions of the law, and by order in council to suspend its operation. This power is permitted on the principle of *salus populi suprema lex*. The ministers, however, exercise this extraordinary power on their own responsibility, and subject to the penalties to which the ministers of the crown are exposed in the event of their advice or conduct being disapproved by parliament, when they apply for an act, as they must do, to justify the departure from the law.

The king's prerogative in relation to parliament is to summon it, to open it when convened, to prorogue it from session to session, and to dissolve it. When he determines to convene a new parliament, it is usual in the courteous exercise of his prerogative first to prorogue the old parliament, and immediately, or soon afterwards, to issue a royal proclamation, by which the king dissolves it, and discharges the peers and representatives from their meeting and attendance on the day to which the parliament was prorogued. The proclamation then declares the royal will and pleasure to call a new parliament, "in order as soon as may be to meet our people, to have their advice in parliament;"

and the lord-chancellor of Great Britain, and the lord-chancellor of Ireland, are ordered forthwith to issue writs for a new parliament, and "for causing the lords spiritual and temporal, and commons, who are to serve in the new parliament, to be duly returned to, and to give their attendance, there." The writs are ordered to be made returnable on a day named in the proclamation, which, by a recent statute, may be any time not less than thirty-five days after the date of the proclamation.¹

Another royal proclamation accompanies the former, for electing and summoning the sixteen peers of Scotland, by commanding all the peers of Scotland to assemble and meet at Holyrood House, in Edinburgh, on a given day and hour, "to nominate and choose sixteen peers to sit and vote in the house of peers in the ensuing parliament, by open election and plurality of voices of the peers that shall then be present, and the proxies of such as shall be absent;" and the lord clerk registrar, or such two of the principal clerks of session as he shall appoint to officiate in his name, are directed to conduct the election, and to return a certificate of the peers elected, to the high court of chancery of Great Britain.

When parliament is prorogued from session to session, it is usual to prorogue it to a day earlier than the probable time of assembling; and to continue it by successive prorogations until the day fixed for the actual despatch of business. These prorogations are effected by royal commissioners duly empowered, who attend at the house of lords, go through the formality of summoning the commons to their house, and then make a further prorogation to a specified day. If there should be occasion to call parliament together before the day to which it stands prorogued, the king may issue a proclamation giving notice that parliament shall meet, and be held for despatch of business, on any day not less than fourteen days from the date of the proclamation.

¹ 15 Vict., cap. 23.

The kings of England never appear more in the full splendour of their sovereignty than when, on the throne in the house of lords, with the peers around them, and the Speaker and the commons below the bar, and the galleries filled with the ladies of the nobility and their friends, they open parliament with a speech, in an assembly unrivalled in the world for dignity, statesmanship, freedom, and wealth. Until the king has opened parliament, and declared the purposes for which it has been called together, neither house can proceed to business ; but the speech need not be delivered by the king in person ; he may appoint peers to open parliament by a royal commission, and the king's speech is then usually read by the lord-chancellor. Parliament is prorogued by a similar assembly, and a speech from the king or his commissioners. Of the prerogative of proroguing or dissolving parliament, Mr. Burke has said "that it is, of all trusts vested in the king, the most critical and delicate ; and that on which the house of commons has the most reason to require not only the good faith, but the favour of the crown."¹ The sovereign is represented in both houses by his ministers, and he is never present, except for the purposes of opening or proroguing the parliament. He communicates with the houses by messages under his royal sign manual delivered by his ministers, which are answered by addresses. Nor can the king, except through his ministers, originate laws ; and those originated by the ministers have no special facilities, but must be put forward, and carried through parliament according its ordinary forms. But to this rule there is one exception, that the king may in his own name introduce an act of grace or pardon for political offences. This is equivalent to an act of indemnity passed by both houses, according to the ordinary forms ; but the act of grace "is received with peculiar marks of respect, is read over once by the lords, and once by the commons, and must be either rejected altogether, or accepted as

¹ Burke's Works ; Motion relative to the Speech from the Throne.

it stands.”¹ It is a standing order of each house that the sovereign must not be named in any debate. His prerogative further entitles the king to assent, or refuse his assent at pleasure, and without stating any reason, to any bill presented to him for that purpose, by the concurrence of both houses; and without his assent no bill can pass into a law.

The royal assent may be given by the sovereign in person, or by commissioners appointed by letters-patent under the great seal.² In either case the commons, headed by their Speaker, appear at the bar of the house of lords; and the title of the bills being read, after each reading the king's answer is declared by the clerk of the parliament, in French. If it be a public bill, the clerk declares “*Le roy le veut*,” —“The king wills it so to be;” if a private bill, “*Soit fait comme il est désiré*,” —“Be it as it is desired.” If the king refuses his assent, it is graciously said that “*Le roy s’avisera*,” —“The king will advise upon it.” When it is a bill of supply, it is carried up and presented to the king by the Speaker of the house of commons, and the royal assent is thus expressed: “*Le roy remercie ses loyal sujets, accepte leur b n volence, et aussi le veut*,” —“The king thanks his loyal subjects, accepts their benevolence, and wills it so to be.” If it be an act of grace, as it originally proceeds from the crown, and the royal assent is implied, the clerk pronounces the gratitude of the parliament on behalf of the nation. “*Les pr lats, seigneurs, et commons en ce pr sent parlement assembl s, au nom de tout vos autres sujets, remercient tr s-humblement votre majest , et prient   Dieu vous donner en sant  bonne vie et longue*,” —“The prelates, lords, and commons in this present parliament assembled, in the name of all your other subjects, most humbly thank your majesty, and pray to God to grant you in health and wealth long to live.”³

The sovereign, in case of actual invasion, or imminent

¹ Macaulay's History, vol. iii. p. 575.

² By virtue of 33 Henry VIII., cap. 21.

³ Blackstone's Commentaries, vol. i. book 1, cap. 2.

danger thereof, is empowered to raise the militia to 120,000 men; but if the parliament be not sitting, or its adjournment or prorogation shall not expire within fourteen days, the sovereign must issue a proclamation for the meeting of parliament within fourteen days.¹

By the prerogative of rejecting bills the king exercises a check on the legislative houses if they should seek to violate his rights and prerogatives as supreme executive magistrate, or to take the executive power out of his hands. No such extreme attempt has of late years called for the exercise of that prerogative, and it may now be said never to be exercised. The crown would not now put itself into such opposition to both houses of parliament. Queen Elizabeth had, however, no such scruples. At the close of one session she rejected forty-eight bills. But there was not, at that time, that close relation between the crown and the parliament which now exists, through the ministers of the crown. Now, all bills introduced into parliament receive the consideration of the ministers before they reach the stage in which they are ripe for the royal decision; any bills that were distasteful to the crown would be opposed in their way through parliament; and if the opposition were unsuccessful, the ministers would resign, and make way for other ministers with more influence; or the crown would get rid of the obnoxious measure, for a time at least, and perhaps altogether, by dissolving parliament. William III. was the last king who refused the royal assent.²

The king is entitled to the allegiance of all the people; and those who accept office or employment under the crown, or who become members of either house of parliament, or

¹ 15 & 16 Vict., cap. 50, ss. 30, 31, A.D. 1852.

² "The President of the United States gives his assent by signing the bill, which is sent to him for his approval and signature. But he cannot reject absolutely. If he disapprove, he must refer the bill back to the house in which it originated, with his objections. Then, if two-thirds of both houses, after consideration of the objections, agree to pass the bill, it becomes law." (Constitution, art. i. s. 7.)

officers or practitioners in the courts of justice, are required to express their allegiance by an oath, of which there are forms for Protestants, Roman Catholics, Quakers, and Jews respectively. The oath now in use for protestants was substituted for the old oaths of allegiance, supremacy and abjuration, by a recent statute.¹ The Roman

¹ 21 & 22 Vict., (1848,) cap. 41, "An Act to substitute one Oath for the Oaths of Allegiance, Supremacy, and Abjuration; and for the Relief of her Majesty's subjects professing the Jewish Religion."

The Protestant Oath of Allegiance.

"I A. B. do swear that I will be faithful and bear true allegiance to her majesty Queen Victoria, (or the name of the sovereign for the time being,) and will defend her to the utmost of my power, against all conspiracies and attempts whatever, which shall be made against her person, crown, and dignity; and I will do my utmost endeavour to disclose and make known to her majesty, her heirs and successors, all treasons and traitorous conspiracies, which may be formed against her or them; and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown; which succession, by an act intituled 'An Act for the further limitation of the Crown, and better securing the Rights and Liberties of the Subject,' is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm.^a And I do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. And I make this declaration upon the true faith of a Christian, so help me God."

The Jews' oath is similar to the Protestants', omitting the last sentence. The Quaker's affirmation is substantially the same as the preceding oath. They sincerely and truly declare and *affirm* to bear true allegiance to Queen Victoria, and to disclose all conspiracies, but omitting the words "to defend her to the utmost of my power," and the concluding words, "And I make this declaration," etc.: 22 Victoria, cap. 19 (1859).

Roman Catholic Oath of Allegiance.

"I A. B. do sincerely promise and swear, that I will be faithful" (using the same words as the protestant oath, down to 'the crown of this realm'). "And I do further declare that it is not an article of my faith, and

^a To this point the Protestant and Roman Catholic oaths are alike.

Catholic oath now in use was introduced by the Roman Catholic Relief Act.¹

To enable the sovereign to maintain the state and dignity of the ancient monarchy, the parliament settles on him an annual income. This is called the Civil List, a name it acquired when the salaries of the civil officers of the government were paid by the sovereign, and the money for the purpose was voted as part of the royal expenses, according to a list laid before the house of commons. By a succession of constitutional compacts between the sovereign and the parliament, the hereditary revenues of the ancient kings, which descended with the crown, have been surrendered to the nation; which, at the same time, through parliament, engaged to make an adequate provision for the dignity and honour of the crown, and for the maintenance of the royal family for the time being. During the last century the surrender of the old revenues was not complete; but since the reign of King William IV. the surrender has been entire. It was deemed a matter of policy, to which our patriotic sovereigns willingly consented, to remove from them all hereditary property, and to render each sovereign in his life entirely dependent on parliament. The income settled on

I do renounce, reject, and abjure the opinion, that princes excommunicated or deprived by the pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or by any person whatsoever. And I do declare, that I do not believe that the pope of Rome, or any other foreign prince, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. I do swear that I will defend to the utmost of my power the settlement of property within this realm, as established by the laws. And I do solemnly swear, that I will never exercise any privilege, to which I am or may become entitled, to disturb or weaken the protestant religion or protestant government in the United Kingdom. And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever, so help me God."

¹ 10 Geo. IV., cap. 7 (1829): An Act for the Relief of his Majesty's Roman Catholic subjects.

her present majesty, Queen Victoria, on her accession to the throne, was £385,000, composed as follows.

1st class,	Privy purse	£60,000
2nd „	Salaries	131,260
3rd „	Expenses	172,500
4th „	Royal bounty, etc.	13,200
5th „	Pensions	
6th „	Unappropriated	8,040
		<hr/> £385,000

The descent of the crown is hereditary, and descends to sons according to the rules of primogeniture; and on failure of sons, and their issue, to daughters, and their issue, by the same rules of primogeniture. “But,” says Sir William Blackstone, “the doctrine of hereditary right, by no means implies an indefeasible right to the throne. No man will, I think, assert this that has considered our laws, constitution, and history, without prejudice, and with any degree of attention. It is unquestionably in the breast of the supreme legislative authority, the king, and both houses of parliament, to defeat this hereditary right; and by particular entails, limitations, and provisions to exclude the immediate heir, and to vest the inheritance on any one else. . . . And this is so extremely reasonable, that, without such a power lodged somewhere, our polity would be very defective. For let us barely suppose that the heir-apparent were a lunatic, an idiot, or otherwise incapable of reigning, how miserable would the condition of the nation be if he were also incapable of being set aside!”¹ This power does not rest merely on theory or expediency, for the Act of Security constituted it high treason to maintain and affirm “that the kings or queens of this realm are not able to make laws and statutes of sufficient force and validity to limit and bind the crown, and the descent, limitation, and government thereof.”²

On the death of the king, his successor is immediately

¹ Blackstone's Commentaries, book 1, cap. 3.

² 6 Anne, cap. 7, s. 1, “An Act for the Security of her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant line.”

proclaimed, and invested with all the rights and duties of the sovereign, so that it is a constitutional maxim, that "the king never dies." Formerly the parliament, the council, and all the officers employed under the crown lost their authority by its demise; but that inconvenience has been put an end to. The parliament, by the existing law, is to continue, and if sitting at the time of the demise, is to proceed to act for six months, unless sooner prorogued or dissolved by the new king; and if prorogued, it shall meet on the day of prorogation, and continue for six months, unless sooner prorogued or dissolved; and in case there be no parliament in being at the time of the demise, the last parliament shall convene and be a parliament. The privy council, the great officers of state, and the officers of the king's household, continue and act for six months, unless sooner removed and discharged; and in like manner continue the occupiers of every office, place, or employment, civil or military, at home or abroad. The great seals and other public seals continue to be used until the new king give order to the contrary.¹

The king's eldest son is born Prince of Wales and Duke of Cornwall. The former title was originally granted by Edward I., after the conquest of the principality. It is a barren title; but the Dukedom of Cornwall has connected with it extensive property in lands, and mines of copper and tin. These were settled by Edward III. (1333) upon his eldest son, the Black Prince, and his heirs, eldest sons of the kings of England, for ever. The younger children of the sovereign are provided for by parliament on their coming of age, or being married; the sons generally receiving from the crown dukedoms, with seats in the house of lords, and a pecuniary provision from the parliament; and the daughters similar provisions, or marriage-portions; the eldest daughter, or Princess Royal, having an ancient and especial claim to be favoured in the provision made for her on her marriage, as being the object of one of the three ancient feudal aids, which the lord was entitled of right to demand, "to marry his eldest daughter."

¹ 6 Anne, cap. 7.

CHAPTER II.

THE PEERS, AND THE HOUSE OF LORDS.

Spiritual Lords.—Temporal Peers.*—Descent of Titles.—Younger Children.—Privileges of Peers.—House of Lords.—Lord-Chancellor and Officers of the House.—Standing Orders.—Functions of the House of Lords.—Constitutional Provisions for removing Conflict with the Commons.—Proxies and Protests.—Court of Judicial Authority.—Impeachment.—Trials of Peers.—Appeals.—House of Lords considered in relation to the Constitution.

THE peers are next in rank to the sovereign, and they form the aristocratic branch of the constitution. There are two orders, the lords spiritual and temporal; who together constitute the house of Lords, or the upper house of parliament.

The spiritual lords consist of the Archbishops of Canterbury and York, of the Bishops of London, Durham, and Winchester, and twenty-one other bishops of the Church of England,¹ and of one archbishop and four bishops of the Church of Ireland. The latter were added to the house as lords of parliament, by the Act of Union² of Great Britain and Ireland, by which the Churches of England and Ireland were united into one protestant episcopal church, called the united Church of England and Ireland. They sit in rota-

¹ When an addition was made to the bishops by the creation of Manchester into a see, it was provided by statute that the number of lords spiritual should not be thereby increased, but (with the exception of the sees of Canterbury, York, Durham, and Winchester, whose archbishops and bishops should always sit in the house of lords) the remaining bishops should sit according to seniority. (10 & 11 Vict., cap. 108.)

² 39 & 40 Geo. III., cap. 67.

tion with the other archbishops and bishops of Ireland. The spiritual lords of parliament constitute the *first estate* of the realm.

The temporal peers consist of all the peers of England, and of sixteen of the peers of Scotland, elected by the body of the Scotch peerage to represent them in the house of lords. The latter were added to the house by the terms of the union with Scotland; and by the union with Ireland, twenty-eight peers of Ireland were added, elected by the whole body of Irish peers to represent them in the house. The representative peers of Scotland sit during the continuance of the parliament for which they were elected; those of Ireland are elected for life.

At the union of Scotland with England, the peers of England ceased to be peers of the realm of England, and they, as well as the peers of Scotland, became peers of the kingdom of Great Britain; and at the union with Ireland, they became peers of the United Kingdom of Great Britain and Ireland. But the union with Ireland did not change the designation of the Irish peers; they remained "peers of Ireland," although it is expressly declared, in the Act of Union, "that all the lords of parliament, spiritual and temporal, sitting in the house of lords, shall have the same rights and privileges as the peers of Great Britain." The king is prohibited from creating a Scotch peer, but he is empowered by the Act of Union to create one peer of Ireland as often as three of the peerages existing at the time of the union shall become extinct; or when they are reduced to a hundred, one peer for every peerage that becomes extinct. The peers of Ireland not elected to the house of lords, may be members of the house of commons; but whilst they continue in the house of commons, they are not entitled to any of the privileges of peerage. The Scotch non-representative peers do not possess that privilege.

The whole body of the temporal peerage of England, Scotland, and Ireland, form the *second estate* of the realm.

The peers of parliament, according to a roll published in

February, 1857, consist of 459 peers, (including the Prince of Wales at their head,) under the several ranks of duke, marquis, earl, viscount, and baron. They are by birth hereditary councillors of the crown; every peer having the right to demand an audience of the king, and to lay before him, with decency and respect, such matters as he shall deem important to the public good. They are addressed by the king, in his writs, as his cousins and councillors.

The titles of the temporal peers descend to their eldest sons, in tail male, females not inheriting, except in a few special cases. They are not now, as they originally were, incident to the tenure of the land; but have become generally, if not universally personal dignities, created by letters-patent, which define the course of descent, now almost universally restricted to the male line. These dignities are granted by the crown at its sole will and pleasure; but when granted, they cannot be surrendered at the will and pleasure of the persons possessing them; nor can they be deprived of them but by attainder or act of parliament.¹

The younger sons and daughters of peers have nominal titles or distinctions, or titles by courtesy; but in the eye of the law they are all commoners. In the second generation, the nominal titles cease; the grandchildren of even dukes, through their younger sons and daughters, being without any titular distinction. They all merge into the mass of the people.

The chief privilege of peerage is an hereditary seat in the house of lords. The personal privileges of peers are exemption from serving on juries and inquests. In cases of treason, felony, misprision of treason, and misprision of felony, they are entitled to be tried by the peers in the house of lords, and not by the ordinary courts. But for misdemeanours, and in cases of *præmunire*, peers are to be tried in the same way as commoners, by a jury;² and by a recent act,³ every lord of parliament, or peer of the realm having

¹ Peers' Report, vol. i. p. 125: *Rex v. Knowles*, 12 Mod. 56.

² *Rex v. Lord Vaux*: 1 Balst. 197.

³ 4 & 5 Vict., cap. 22.

place or voice in parliament, against whom any indictment may be found, shall plead to such indictment, and shall upon conviction be liable to the same punishment as any other of her majesty's subjects. In common with members of the house of commons, they are free from arrest at the suit of a subject. In all other respects they are subject to the same laws, and to the same taxation, as commoners. As the English peers have never, like the old noblesse of France, been separated from the people by odious privileges, so they have often united with them in promoting the common good. Several important instances of their leading and co-operating with the people for the acknowledgment or recovery of general rights, have been given in the first part of this work ;—in modern days we know that a large portion of the nobility are supporters of popular principles ; and devote their talents and their fortunes to the improvement of the laws, and of the moral and social condition of the people.

It may be some drawback from their hereditary honours, that peers are deprived of privileges which are possessed by the commons. They have no voice, in their legislative capacity, in imposing taxation, or in dealing with the revenue. They can only refuse to agree to the commons' grants ; but although they cannot impose taxation, they must bear their proportionate part of its burdens. They are personally prohibited by a resolution of the house of commons from in any manner interfering in the elections of the members of the lower house.

When a parliament is called, every lord, spiritual and temporal, is entitled to a writ of summons. This writ issues out of chancery, and is under the great seal. It is in accordance with the provision of Magna Charta that the king should cause the bishops and great barons to be summoned, "singly by his letters, forty days at least before their meeting, and to a certain place." The time, by a recent statute, has been reduced to not less than thirty-five days.¹

¹ 15 Vict., cap. 23.

The peers, at the commencement of every parliament, and before taking their seats, take the oath prescribed by law.¹

The house of lords is duly constituted for business if only three members are present.

The lord-chancellor is, *ex officio*, Speaker of the house, and has precedence there over all temporal peers, except the king's sons, nephews, and grandsons. He has the same privileges and precedence, although not raised to the peerage; but in modern days the lord-chancellor is always a peer, and the corresponding office of lord keeper is disused. He has not, like the Speaker of the house of commons, authority over the members of the house, to preserve order in debate;—he is not even addressed in debate, nor does he name the peer who is to speak. But he is not, like the commons' Speaker, excluded from the debate; nor, like him, has he a casting vote; for by a rule of the house, where the number of votes is equal, the question passes in the negative. The crown may by commission name others to preside in the absence of the chancellor; and the lords, of their own authority, if no Speaker appointed by the crown be present, may choose one of themselves to act as Speaker, which they often do in hearing appeals; but any such Speaker is immediately superseded when the chancellor enters the house.²

The chief officers of the house of lords are the Clerk of the Parliaments, the first and second Clerk's Assistant, the Gentleman and Yeoman Usher of the Black Rod, and the Serjeant-at-Arms. The house is also assisted by the Judges of the three courts of law, the Master of the Rolls, the Attorney-General, the Solicitor-General, and the King's Serjeants, who are summoned at the beginning of each parliament, by writs under the great seal, to be "personally present in parliament with us and others of our council, to treat and give advice." But these take no part in the de-

¹ See the Oath, *ante*, p. 444.

² Lords' Journals, June 25, 1661. Lord Campbell's *Lives of the Chancellors*, vol. i.

liberations of the house, and only give their advice when it is specially asked,—now only on points of law. The house also appoints one of its members to be Chairman of Committees; who takes the chair when the house is in committee: he also manages the private legislation of the house.

The proceedings of the house are regulated by rules and orders, made and at any time alterable by its own sole authority, called the Standing Orders. These describe and regulate its ceremonial and business proceedings; the introduction of peers; their proper places in the house; the attendance of peers; their leave of absence; the time of meeting; the adjournments; the order of debate; the forms of procedure in bills or acts; the mode of conducting conferences with the commons; the questions to be put; the modes of division, and other formal matters connected with the internal management and regulation of the house.¹

The house of lords has co-ordinate power with the house of commons in the business of legislation, except as to money bills, which cannot be originated or altered there. Its inquisitorial power, into the conduct of the executive, is also co-ordinate with that of the lower house. But as much the greater part of the legislative business now originates in the house of commons, the lords are principally occupied in the consideration of measures that have been brought to the first stage of maturity in the house of commons; and it is as a check on the proceedings of the lower house, that the house of lords chiefly exercises its functions. There the ministerial or other measures are discussed, and presented to public consideration, in the aspect in which they appear to the aristocratic branch of the legislature, in which are always found veteran statesmen and lawyers, highly qualified by education and habits for debate, and for enlightened action; and there such measures, if they are not approved, are frequently modified by alterations, which are submitted to the

¹ These will be found fully described and explained in Mr. Erskine May's practical treatise on the Law, Privileges, Proceedings, and Usage of Parliament: 1855.

reconsideration and acceptance of the commons. It is no inconsiderable excellence of the constitution that the lords may, in dangerous times, and under adverse circumstances, express their individual and collective opinions, without fear of their operating to their personal loss or disadvantage through the disapproval of a constituency.

Independence of popular election may, indeed, operate to produce popular defiance ; and for that the constitution has given a remedy in the unlimited power which the crown possesses of raising its adherents into the house of lords, and thus swelling the number of its supporters. If that resource should fail, or be inexpedient,—or if the contest should be with the commons, that house could exercise its power of stopping the supplies ; and the peers are too much interested in the continuance of social order and settled government, to resist this last appeal. It seems now, however, to be conceded by the house of lords, as a settled constitutional principle, that they must not continue an obstinate and determined resistance to measures that have been repeatedly passed by the house of commons with increasing and large majorities ; and especially when backed by a preponderating expression of opinion by the people.¹

¹ This statement seems warranted by speeches in the house of lords on the Oaths Bill, passed by the house of commons, and sent to the house of lords in the session of 1858. EARL GREY, on the 22nd of April, 1858, after remarking on the perseverance of the house of commons in maintaining the principle,—not by one house of commons, but by several under different administrations, and therefore ratified by the nation at large, spoke as follows :—"We have unmistakable evidence that on this subject the mind of the nation is made up ; and being so made up, let me remind your lordships what is the proper duty of this house. Ever since our constitution has been settled in its present state, there has been a general concurrence of opinion amongst statesmen and political writers, that this house ought not to oppose an obstinate resistance to the declared will of the country. The attempt to do so can never in the end succeed, or conduce to the dignity or authority of your lordships' house." With reference to the Earl of Derby, the premier, continuing his opposition to the bill, Earl Grey observed, "I will recommend him to pause and consider what was the conduct of a distin-

The peers have the privilege, on all occasions except when the house is in committee, of voting by proxy, giving their proxies to other peers. And if they disapprove of any measure that has passed through their house, they may enter on the journals a protest to record the reasons of their disapproval. Neither of these privileges is possessed by the commons.

The house of lords has long ceased to exercise original jurisdiction over civil cases, according to its original con-

quished man who formerly held the situation he now holds, with reference to a similar question. In 1828 the repeal of the Test Act was carried by a comparatively small majority in the house of commons. That measure was notoriously opposed to the opinion of the Duke of Wellington—then at the head of the government—and as notoriously contrary to the opinion of a very large majority of this house. But the Duke of Wellington, without professing to have changed his convictions on the subject in dispute, taking a statesman's view of the consequences that would ensue from asking this house to place itself in opposition to the measure, which had been passed by the representative branch of the legislature, advised your lordships to agree to it; and his counsel was adopted. I believe that among men of judgment and experience there never has been any difference of opinion as to the Duke of Wellington having on that occasion taken a correct view of his duty." (Hansard's Parliamentary Debates, 3rd ser., vol. ii., sess. 1857-8, p. 1480.)

LORD LYNTHURST, on the second reading of the same bill, on the 27th of April, 1858, after calling attention to the speech of Earl Grey, spoke as follows:—"Our legislature is a species of progressive machine: it consists of three independent powers; and if either power adhere rigidly to its own opinion, the machinery of legislature would, on many occasions, come to a standstill; it is by mutual forbearance and concession that the machine practically works out the great objects of the constitution. . . . It is part of our duty to originate legislation; but it is also a most important part of our duty to check the inconsiderate, rash, hasty, and undigested legislation of the other house;—to give time for consideration; and for consulting or perhaps modifying the opinions of the constituencies; but I never understood, nor could such a principle be acted upon, that we were to make a firm, determined, persevering stand against the opinion of the other house of parliament, when that opinion is backed by the opinion of the people; and, least of all, on questions affecting, in a certain degree, the constitution of that house, and popular rights. If we do make such a stand, we ought to take care that we stand on a rock." (*Idem*, p. 1768.)

stitution ; and its judicature is now confined to trials of persons impeached by the house of commons ; to trials of peers ; and to appeals from the superior courts of law and equity in England and Ireland, and from the Court of Session in Scotland. Appeals from the courts of law are brought before the lords, by writs of error from the court of exchequer-chamber ; and under petitions of appeal from the decrees of the court of chancery. The lord-chancellor, or his deputy for the time being, is the presiding judge. The house confirms or reverses the judgments and decrees of the courts appealed from, and may order payment of costs of the appeal. The peers decide on claims of peerage and offices of honour, under references from the crown ; and they decide on controverted elections of the representative peers of Scotland and Ireland.

An impeachment before the lords by the commons in parliament is founded on articles charging the offence, passed by the commons, and afterwards tried by the lords. The earliest instance recorded of impeachment by the commons, at the bar of the house of lords, was in the reign of Edward III.¹ The last is the case of Lord Melville, in 1805. An impeachment can only be for high crimes and misdemeanours, such as the ordinary magistrate either dares not or cannot punish. The constitutional principle is, that the representatives of the people, as the parties injured, cannot properly *judge* ; and the ordinary tribunals would be swayed by the influence and passions of the accused. The peers, as an assembly presumed to have neither the interests nor the passions of popular assemblies, are therefore the judges. The lord-chancellor presides, and the charges are supported by members of the commons, selected by the house ; but all the members of the house may be present at the trial. An impeachment is not abated by a dissolution of the parliament, but is resumed at the stage it was suspended, when a new parliament assembles. Nor can the king get rid of it, by a pardon to the accused, for we have seen

¹ See *ante*, p. 97.

that no pardon under the great seal shall be pleadable to an impeachment by the commons in parliament.¹

After verdict and conviction by the lords,—which is given upon their honour, and not on oath,—judgment is not passed, unless demanded by the commons, who may be satisfied with the conviction, without calling for sentence.

Trials of peers for treason or felony are held before the house of lords, if parliament is sitting; if not, before selected peers. In either case the presidency of the lord-chancellor is suspended; and a lord high steward is appointed by the crown, specially to hold the trial; that ancient office having long ceased to be permanently filled up. The appointment of a lord high steward in these trials, arose from the lord-chancellor, in early times, being generally an ecclesiastic, who could not meddle in matters of life and death. Since the chancellor has been a layman, he has generally been nominated lord high steward. As in an impeachment, the lords of parliament are not sworn, but give their verdicts upon their honour, each being called to give it separately, beginning with the lowest in rank.²

The house of lords is the institution by which the aristocratic portion of the people is admitted to a share in the supreme power of the state, in accordance with the theory on which the constitution is founded,—the union of the monarchic, aristocratic, and democratic forms of government.³ The history we have sketched, has shown that the house of lords has generally followed the course of policy and action prescribed by the house of commons,—seldom persisting long in opposition, even when their own order and authority were affected by the changes proposed. Although containing a majority of men of eminent descent, and of

¹ 12 & 13 William III., cap. 2, *ante*, p. 434. But after conviction the king may pardon. "The law hath put rules and limits to the justice of the king, but not unto his mercy: that is transcendent, and without any limits of the law." (Coke's Reports, vol. vi. p. 329.)

² Lord Campbell's Lives of the Chancellors, vol. i. p. 17.

³ See *ante*, p. 4.

great wealth and social importance, its atmosphere is not unfavourable to the existence of popular principles and feelings. It is far also from being a stagnant institution; for it is continually receiving accessions of men raised to the peerage from the middle, and sometimes the lower classes, who have attained distinction in the army and navy, in the law, in commerce, or in statesmanship in the house of commons. In the United States constitution, the senate is analogous to it, as a legislative chamber of an aristocratic nature—not permanent, as the house of lords, but elective,—yet on a principle of election less popular than the house of representatives.¹ So wherever representative government has been formed, a chamber as far as practicable of a more aristocratic character than the co-ordinate house of representatives has been established; but the house of lords is the branch of our constitutional system which other countries have found the most difficult to imitate.²

¹ The senate of the United States is composed of two senators from each state, chosen by the legislature thereof for six years. No person can be a senator who has not attained thirty years of age, and been nine years a citizen of the United States, and who was not, when elected, an inhabitant of that state for which he was chosen. The vice-president of the United States is president of the senate. The senate (like the house of lords) has the sole power to try impeachments. When sitting for that purpose, they are on oath or affirmation, and no person can be convicted without the concurrence of two-thirds of the members present. (Constitution, art. 18, chap. 3.)

² “The principle of the representative system is the destruction of all absolute power. The division of the legislative power into two chambers is necessary to ensure that the central power shall not usurp unlimited authority. The executive power and one chamber have never co-existed long. One of these powers has speedily succumbed. The division of the central power, or of the actual sovereignty, between the executive power and two legislative assemblies is, therefore, strictly derived from the fundamental principle of the representative system.” (History of the Origin of Representative Government in Europe, by M. Guizot: Bohn’s edition, p. 445 *et passim*.)

CHAPTER III.

THE REPRESENTATIVES OF THE PEOPLE, AND THE
HOUSE OF COMMONS.

House of Commons.—Third Estate.—How Composed.—Members for Scotland ; for Ireland.—Common Right of Eligibility.—Roman Catholics and Jews admitted.—Disqualifications.—Office under the Crown, and Vacation of Seats.—Secretaries of State.—Property Qualifications abolished.—Writs for Cities and Boroughs.—Time of Election.—Vacancies, how Supplied.—Candidates for the House of Commons.—Bribery and Corrupt Practices.—Treating.—Undue Influence.—Cockades.—Election Auditor.—Candidates' Personal Expenses.—Auditor's Account.—Punishment for Bribery.—Travelling Expenses of Voters.—Election of the Speaker.—Confirmation by the Crown.—Members Sworn.—Speaker's Rank and Emoluments.—Deputy Speaker.—House, how Constituted.—Call of the House.—Officers of the House.—Chairman of Committee.—Standing Orders.—Election Committees.—Tribunal for Discovery of Corrupt Practices.—Power of Impeachment.—Access to the Crown.—Power to take Evidence on Oath.—Duties of the Members.

THE House of Commons is composed of representatives of the third estate of the realm ; that is, of the whole of the people of the United Kingdom, except the spiritual and temporal lords of parliament.¹ It will be the purpose of this Chapter to explain the manner in which the house of commons is constituted,—to describe the eligibility of the members,—their duties and obligations both as candidates

¹ "The lower house of parliament is not, in proper language, an estate of the realm, but rather the image and representative of the commons of England, who, being the third estate, with the nobility and clergy make up and constitute the people of this kingdom, and liege subjects of the crown." (Hallam's Constitutional History, vol. ii. p. 237.)

for election, and as members,—the laws made and the peculiar functions and duties of the house for preserving purity of elections,—preparatory to the consideration of the separate and combined action of the two houses as the parliament; but reserving for another Chapter the mode of electing the house of commons, and the rights and duties of the electors.

The house of commons consists of such persons, being laymen, as have been elected by such of the people as have the elective franchise, to be the representatives of the several counties of England, Scotland, and Ireland,—of various cities, boroughs, and the Cinque Ports, within the counties,—and of the universities of Oxford and Cambridge in England, and of Trinity College, Dublin, in Ireland. It comprises 654 members, distributed as follows:—

<i>England.</i> —County Members	143
Isle of Wight	1
Oxford University	2
Cambridge University	2
Cities, Boroughs, and Cinque Ports . . .	319
	—467
<i>Wales.</i> —County Members	15
Boroughs	14
	— 29
<i>Scotland.</i> —County Members	30
Cities and Boroughs	23
	— 53
<i>Ireland.</i> —County Members	64
Dublin University	2
Cities and Boroughs	39
	—105
	—
	Total 654

The members for Scotland sit by virtue of the Act of Union of England and Scotland,¹ which declared that the succession to the monarchy of Great Britain should be the same as to that of England; that the United Kingdom should be repre-

¹ 5 Anne, cap. 8.

sented by one parliament,—that there should be a communication of all rights and privileges, customs and laws, between the subjects of the two kingdoms (except municipal laws, and except where it was otherwise agreed, or unless altered by parliament); and that sixteen peers of Scotland should be chosen from the general body of Scotch peers to represent that peerage in parliament; and forty-five members to sit in the house of commons,—thirty for counties, and fifteen for boroughs;—to which a statute passed in the following year added, that there should be only one privy council in Great Britain.¹ The Act of Union also provided that no person should elect, or be elected one of the forty-five members, but who would have been capable of electing, or of being elected a representative of a shire or borough to the parliament of Scotland.

The members for Ireland sit by virtue of the Act of Union of Great Britain and Ireland;² which declared that from the 1st of June, 1801, they should be united in one kingdom, for which there should be one and the same parliament,—that four spiritual lords, and twenty-eight lords temporal, should sit and vote in the house of lords, and one hundred commoners—two for each county, two for the city of Dublin, two for the city of Cork, and one for each of the thirty-one most considerable cities and boroughs—should sit and vote in the house of commons. It was declared that the qualifications of the members should be the same as those required by law in England.

All male natural-born subjects of the United Kingdom of full age, possess a common right of eligibility to become members of the house of commons. But the right ceases on elevation to the peerage, or by entering into holy orders. The peers of Ireland who have not been elected representative peers in the house of lords may sit in the house of commons. The prohibited clergy comprise persons in holy orders of the Church of England; priests, deacons, or ministers of the Kirk of Scotland; and persons in holy orders

¹ 6 Anne, cap. 6.

² 39 & 40 Geo. III., cap. 67.

of the Church of Rome. But the prohibition does not extend to dissenting or nonconformist ministers.

The common right was also taken away from Roman Catholics, as we have seen, in the reign of Charles II.;¹ but it was restored by act of parliament in 1829,² which enacted that it should be lawful for any person professing the Roman Catholic religion, being a peer, or who should be returned as a member of the house of commons, to sit and vote in either house, respectively, upon taking and subscribing the oath given in the act, instead of the oaths of allegiance, supremacy, and abjuration.³

Jews were not recognized as admissible to seats in either house of parliament, but there was no law expressly excluding them. They were, when returned, practically excluded by being unable to adopt the sanction to the oath of abjuration, until lately required to be taken on admission into parliament. An act of 1858 put it into the power of either house to admit Jews.⁴ It enacted that where it should appear to either house of parliament that a person professing the Jewish religion, otherwise entitled to sit and vote in such house, was prevented from sitting and voting by his conscientious objection to take the oath in the form required, such house might resolve that thenceforth, any such person, in taking the oath, might omit the words "and I make this declaration upon the true faith of a Christian;" and so long as such resolution should continue in force, the oath, when taken by a Jew, to entitle him to sit and vote in that house of parliament, might be modified accordingly. The house of commons, immediately after the passing of the act, passed such a resolution, by virtue of which Baron Rothschild took the oath and his seat as one of the members for the city of London. It was decided by the Speaker, in the

¹ *Ante*, p. 409.

² 10 Geo. IV., cap. 7: An Act for the Relief of his Majesty's Roman Catholic subjects.

³ See the Roman Catholic Oath, *ante*, p. 444.

21 & 22 Vict., cap. 49.

first session of 1859, that the resolution only continued in force during the session in which it was passed.

The general right to sit in parliament is suspended in those persons who have accepted offices, the duties of which are considered to be incompatible with the representative character, or which place the holders of them under the influence of the crown; and it is totally lost by conviction of treason or felony. Among the former class are the English, Scotch, and Irish judges (with the exception of the master of the rolls in England), the sheriffs of counties and the returning officers of cities and boroughs, for the places for which they are returning officers.

Public servants under the crown are disqualified by a series of statutes passed since the Revolution.¹ The Act of Settlement² enacted "that no person who has an office or place of profit under the king, or receives a pension from the crown, should be capable of serving as a member of the house of commons." The effect of this law was to exclude from the house of commons not only ordinary placemen and pensioners, but also the ministers of the crown and all members of the government. But before it came into operation,—which it was not to do until a descendant of the Princess Sophia of Hanover came to the throne,—that effect of the law seems to have been discerned; and the enactment was repealed by an act of Queen Anne, called the Act of Security;³ which, instead of it, introduced two new provisions, that still remain.

"1. That no person having, in his own name, or in the name of any person in trust for him, or for his benefit, any office, or place of profit whatsoever under the crown, created or erected, or to be created or erected since October 25th, 1705,—nor any person having any pension from the crown during pleasure,—or for any term or number of years,⁴—

¹ Mr. May states that the disqualifications are to be collected from 116 statutes. See Parliamentary Practice, p. 334.

² 12 & 13 Wm. III., cap. 2.

³ 6 Anne, cap. 7.

⁴ Added by 1 Geo. I., stat. 2, cap. 56.

shall be capable of being elected, or of sitting and voting as a member of the house of commons.¹

“2. That if any member of the house of commons accept any office of profit from the crown (excepting an officer in the army or navy receiving a new or other commission) his election shall be void, and a new writ shall issue; but such person shall be capable of being again elected.”²

The first is a general exclusion of all persons within the category. But a modification of the statute of Anne was made in the session of 1859, by an act which, reciting that doubts had arisen whether pensions granted as the reward of diplomatic service on the conditions of an act—2 & 3 Wm. IV., cap. 116—came within the provisions of that statute, as a pension during pleasure, enacted that pensions granted for diplomatic services according to the provisions of the statute of William, should not disqualify the holder from sitting or voting as a member of the house of commons.³ In the second of these cases, the member vacating his seat for office may be re-elected; and it is in compliance with that act that members accepting office under the crown, when ministerial changes occur, are obliged to submit themselves to re-election by their constituents.

Various statutes exclude persons employed in the collection and management of the customs, excise, the post-office, stamps, and in all branches of the revenue; and as well the subordinate collectors and clerks as the commissioners and comptrollers.⁴ A statute of George II. declared that commissioners and deputies and clerks in the office of the lord high treasurer, or of the commissioners of the treasury, or of the auditor or receipt of the exchequer, or of the chancellor of the exchequer, or of the lord high admiral, or commissioners of the admiralty, or of the paymasters of the the army and navy, or of the principal secretaries of state, or of the commissioners of any of the branches of the re-

¹ 6 Anne, cap. 7, s. 25.

² *Idem*, ss. 26–28.

³ 22 & 23 Vict. cap. 5.

⁴ 11 & 12 Wm. III., cap. 2. 12 & 13 Wm. III., cap. 10.

venue, or of the commissioners of appeals, are incapable of sitting and voting in the house of commons.¹

But the same act preserved the right to sit in the house, of the treasurer or comptroller of the navy, the secretaries of the treasury, the secretary to the chancellor of the exchequer, the secretaries of the admiralty, the under secretary to any of the principal secretaries of state, or of the deputy paymaster of the army. It also declared that it did not exclude person having or holding any office or employment for life, or for so long as he should behave himself well in office.

These statutes distinguish between the ministers appointed by the crown, and the secretaries of the offices of government to which the ministers are appointed. The former, after acceptance of office, must be re-elected, whilst the latter may sit without re-election; not only because they are excepted by the statute, but also because they are not directly appointed by the crown.² But all the subordinate government functionaries besides these are excluded; and thus the several offices of government, to which the ministers are appointed as chiefs, are maintained in constant order by functionaries holding permanent office,—not dependent on the changes of cabinets, or the continuance of parliament,—but engaged in carrying on the ordinary affairs of the government without interruption; and always prepared to assist in the transfer of the office from one minister to another.

Contractors for the public service are also excluded from the house of commons. Any member of parliament accepting a government contract, renders his seat void, and becomes liable to a penalty of £500 for every day he sits in the house.³

An act was passed in 1855, which enacted that any three of her majesty's principal secretaries of state for the time being, and any three of the under secretaries, may sit and vote as members of the house of commons; but not more

¹ 15 Geo. II., cap. 22.

² 15 Geo. II., cap. 22, s. 3.

³ May's Parl. Prac., p. 457.

than three of each at the same time.¹ The number has since been increased to four principal secretaries and four under secretaries, by the "Act for the better Government of India."² Thus one, at least, of the five principal Secretaries of State must be a member of the House of Lords.

The same act provides that no member of council, appointed or elected under that act, shall be capable of sitting or voting in parliament.³

A member found and declared bankrupt is for twelve months incapable of sitting and voting, unless the fiat be superseded or the creditors be paid or satisfied to the full amount of their debts. If that has not been effected at the expiration of twelve months, the seat is void, and a new election must take place. The member may, however, retire at any time, by accepting the Chiltern Hundreds.⁴

The general right of sitting in parliament was, until lately, further restrained by the necessity for possessing a landed or pecuniary qualification; and although, by a recent act, no such qualification is now required, it is desirable to review the ancient law. By an old statute all knights of shires were required to be actual knights, "or such notable esquires and gentlemen as had estates sufficient to be knights" (which we have seen to be estates of the value of £20 a year of the ancient money), and by no means of the degree of yeomen. A statute of Queen Anne⁵ made the qualification definite (but still retained a landed qualification), by requiring every knight of a shire, in England or Wales, to have a clear estate in land, freehold or copyhold, to the value of £600 per annum, and every citizen and burgess to the value of £300 per annum. But there was an exception in favour of the eldest sons of peers, and of persons qualified to be knights of the shire, and of members for the universities of Oxford and Cambridge, for whom no landed qualification was required.

¹ 22 Geo. III., cap. 45. 41 Geo. III., cap. 52, as to Ireland.

² 18 Vict., cap. 10; 21 & 22 Vict., cap. 106, s. 4.

³ *Idem*, s. 12.

⁴ 52 Geo. III., cap. 144.

⁵ 9 Anne, cap. 5.

The Scotch members were exempt from the law which imposed a landed or pecuniary qualification; for there (as we have before stated) eligibility and the right to elect were identical. The low qualification—identical with the elector's qualification—was not disturbed by the statute of Anne, nor was it affected by later statutes; so that, in effect, the Scotch members remained free from the law which imposed qualifications on the English and on the Irish members.

The Act of Union with Scotland prevented the eldest sons of Scotch peers from being elected amongst the forty-five representatives, because they were, by the old law of Scotland, incapable of sitting in the Scotch parliament; but the Scotch Reform Act of 1832 removed that incapacity, and they were declared entitled to be registered, and to vote for, and also to serve as members for any county or borough in Scotland. Even the low qualification retained by the Act of Union, was removed by a declaration that no member for any county in Scotland, should be required to be qualified as an elector within the county.¹

The Act of Union with Ireland provided that the qualifications in respect of property of the members elected on the part of Ireland, should be respectively the same as the qualifications in England; and, therefore, they became subject to the statute of Anne.

The English and Irish qualifications were modified by a statute of Queen Victoria,² which, without altering the amount of qualification from £600 a year for a county, and £300 a year for a borough, repealed the restriction of such property to freehold and copyhold lands, and allowed the qualification to be in lands, held for life or years, or in personal property, —the possession of which, and the declaration of the particulars thereof to the house, were enforced by enactments of great stringency. But by an act of 1858 the whole system of property qualification was abolished: and so much of the statute of Anne and other statutes, as relates to the qualification of members, was repealed.³

¹ 2 & 3 Will. IV., cap. 65.

² 1 & 2 Vict., cap. 48.

³ 21 & 22 Vict., cap. 26.

The commons are elected by virtue of writs issued by the clerk of the crown in chancery, on the authority of the warrant of the lord-chancellor. According to the ancient practice, the writs were addressed to the sheriffs of the counties, who conducted in their own persons, or by their deputies, the proceedings for the election of the members for the counties; and issued their precepts to the returning officers of the cities and boroughs to cause elections to be made there, and to return the precept with the names of the parties elected to the sheriff.¹ But by a recent act, the ancient practice has been altered with regard to city and borough elections; the writ is now directed to the returning officers of cities and boroughs, and of the universities of Oxford and Cambridge, without the intervention of the sheriff.

By the same act the time for proceeding to election in England and Wales has been altered. The election must now take place, in counties, not later than the twelfth, nor sooner than the sixth, day after the sheriff's proclamation; and in cities and boroughs the returning officer must proceed to election within six days after the receipt of the writ, giving three clear days' notice, at least, of the day of election, exclusive of the day of proclamation and of the day of election. The polling at the universities shall not continue more than five days,—Sunday, Christmas-day, Good Friday, and Ascension-day being excluded.²

Vacancies which occur in seats in the house of commons after a new parliament has assembled are supplied by writs issued on the authority of the Speaker, given by his warrant to the clerk of the crown in chancery; and when the house is sitting, by its order, obtained on a motion for a new writ. Vacancies which occur during the recess of parliament, by death, or elevation to the peerage, are supplied without waiting for the meeting of the house, by the authority of an act which provides that on the receipt of a certificate, under the hands of two members, that any member has died, or that a writ of summons under the great seal has been issued to

¹ See *ante*, p. 128.

² 16 & 17 Vict. cap. 68, 1853.

summon him to parliament as a peer,—either during the recess, or previously thereto,—the Speaker shall give notice forthwith in the ‘London Gazette;’ and after fourteen days from the insertion of such notice, he is required to issue his warrant to the clerk of the crown to make out a new writ. When the election is to fill a vacancy, and not for a new parliament, the returning officer must make his return within fourteen days.¹

By a recent act the powers of the preceding act were extended to provide for filling vacancies occasioned by acceptance of office. The Speaker is empowered, during the recess, to issue his warrant to the clerk of the crown, to make out a new writ for election of a member in the room of any member who has since an adjournment or prorogation accepted office, so soon as he shall have been gazetted, and a notice thereof, together with a copy of the ‘Gazette,’ shall have been sent to the Speaker, under the hands of two members. The member himself is also required to notify his acceptance of office to the Speaker, by writing under his hand, or by countersigning the certificate.³

Candidates for the house of commons are put under restrictions, with the view of preventing bribery and undue influence of the electors, and of restraining undue expenditure. For that purpose two acts were passed, in 1854 and 1858; the last of which,—in reference to the preceding one, and the future construction of it,—defined candidates to include all persons nominated as candidates, or who should have declared themselves candidates, on or after the day of issuing of the writ, or after the dissolution, or vacancy, in consequence of which the writ should have been issued; but no liability should be imposed on a person nominated without his consent.

The laws against bribery were consolidated by the first of these acts. It repealed the old laws, and introduced new modes of preventing and punishing the offence. The offence,

¹ 24 Geo. III., s. 2, cap. 26. Where a seat becomes vacant, pending a petition against the return, see 2 & 3 Vict., cap. 38, s. 4.

² 21 & 22 Vict., cap. 110.

as defined by the act, comprehends all the common and ordinary modes of bribery by money, or by place, by gift, or loan, or by promise; and extends to the giver and to the receiver. It includes *treating* also, and deals with a candidate committing that offence, which it defines to be "the giving, or providing, or paying, wholly or in part, in order to be elected, the expenses incurred for any meat, drink, entertainment, or provisions, to or for any person, in order to influence such person to vote, or refrain from voting;" and it imposes a penalty of £50 on a candidate, or any person on his behalf, who commits that offence, whilst it disables the voter so treated from voting at the election, and declares the vote void, if given.¹

The act introduces a new offence,—"*undue influence*,"—which is "directly or indirectly to make use of, or to threaten to make use of, any force, violence, or restraint;—or to inflict, or threaten the infliction of any injury, damage, harm, or loss, or in any manner to practise intimidation upon or against any person, in order to compel him to vote, or refrain from voting;—or on account of such person having voted or refrained from voting at any election;—or by abduction, duress, or any fraudulent device or contrivance, to impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter;—or thereby to compel, induce, or prevail on any voter, either to give or refrain from giving his vote at any election." The offence of undue influence is made a misdemeanour, and in Scotland an offence punishable by fine and imprisonment; and an offender is made liable to forfeit £50 to any person who shall sue for the same, with full costs of suit.

It is made illegal for a candidate to provide or pay for cockades or ribbons, or for the expense of chairing the member.

In order to put a check on the great expenditure often made at elections, the returning officer of every county, city,

¹ 17 & 18 Vict., cap. 102: An Act to Consolidate and Amend the Laws relating to Bribery, Treating, and Undue Influence at Elections of Members of Parliament, called "Corrupt Practices Prevention Act, 1854."

and borough is required, in August of every year, to appoint "an election auditor, or auditor of election expenses," who is to act for a year, or until a new appointment is made. The bills, charges, or claims, upon a candidate in respect of the election, are required to be sent, within one month after the declaration of the election, to the candidate, or his agent, who, within three months, must send them to the election auditor; stating also, at the time, whether he admits the several bills, charges, or claims, in whole, or in part,—or to what extent he admits them to be correct. No payment must be made but through the election auditor; and any payment by a candidate is illegal, and renders him liable to heavy penalties.

The personal expenses of the candidate, and his expenses of advertisements, may however be defrayed by the candidate himself; but he is to furnish an account of the latter to the election auditor, to be included in the general account; and under the same condition the candidate may, before the day of nomination, pay any lawful and reasonable expenses, which are fit and proper, and cannot be conveniently postponed.

The auditor is to make out an account of the expenses incurred at the election, and is to insert an abstract of it, signed by him, in some newspaper published in the county or place where the election was held.

A candidate for any county, city, or borough declared by an election committee guilty by himself, or his agents, of bribery, treating, or undue influence, shall be incapable of being elected, or sitting in parliament, for such county, city, or borough, during the parliament then in existence.

In a case under this act, where a candidate had authorized the words, "your railway expenses will be paid," to be added to a printed circular informing the voter of the day of polling, and requesting his attendance, the house of lords decided (on writ of error from the exchequer-chamber, and after taking the opinions of the judges) that the promise amounted to bribery, under the second section of the act,

fixing bribery on any person "who shall give or lend, or shall offer or promise to give or lend, any money to or for any voter in order to induce any voter to vote or refrain from voting." In this case the voter was paid eight shillings, and he gave his vote; but Lord-Chancellor Cranworth, in delivering the judgment, stated that "it was not necessary that the voter should vote, or even promise to vote, to constitute an act of bribery under that provision."¹

This decision led to the second act before referred to, "to continue and amend the Corrupt Practices Prevention Act, 1854." It enacted that it should be lawful for a candidate, or his agent appointed in writing, to provide conveyance for a voter, for the purpose of polling at an election, and not otherwise; but it should not be lawful to pay any money or give any valuable consideration to a voter for, or in respect of, his travelling expenses, for such purpose. But it is provided that a full, true, and particular account of all payments made for such conveyance, signed by the candidate or his agent, must be delivered to the election auditor, with the names and addresses of the persons to whom such payments were made,—and the amount of such account should be included in the general account of the election expenses, to be made and kept by the election auditor.²

The first act of the house of commons, when embodied and assembled, is to elect one of their members to be their Speaker. He is called Speaker, because he is the organ of the house of commons on all occasions when the house as a Body has to communicate with third parties; as when they are called to the bar of the house of lords to meet the sovereign, on which occasion he alone of the commons

House of Lords, April 17, 1858: *Cooper v. Slade*.

² 21 & 22 Vict., cap. 87, A.D. 1858. The provisions of the acts of 1854 and 1858 have been much disapproved as regards the restraint they place on the conveyance of voters to the poll, whilst they have been far from effectual in the repression of bribery. In order to ensure an early reconsideration of the whole subject in parliament, an act was passed in 1859, declaring that the act of 1854, as amended by the act of 1858, should continue in force until the 10th August, 1860. 22 & 23 Vict. cap. 48.

must speak. But when presiding in the house, he does not speak on the questions in debate, nor vote, unless the numbers are equal, when he has a casting vote. In the time of Queen Elizabeth it was customary for the Speaker to read and expound the bills to the house. He was usually selected by the sovereign, and devoted to his interests, and he was the medium of communication between the sovereign and the house.

The election of Speaker still requires confirmation by the crown, and on the occasion of requesting such confirmation an ancient constitutional ceremony takes place. The election is made by the commons immediately after their return from the house of lords (where they are conducted by the chief clerk) to hear parliament opened by the royal commissioners; for it is now usual to defer the royal speech opening the parliament until time has been allowed (usually about a week) for the members to be sworn, and for the house to be duly constituted. The election is made by motion, made and seconded in the mode adopted at ordinary assemblies; and when determined, the successful candidate is conducted to the chair by his mover and seconder. On the following day the Speaker elect (not yet in official costume) proceeds to the house of lords, followed by the members of the house of commons, where he announces his election to the royal commissioners, and submits himself, with all humility, to the sovereign's gracious approbation. The lord-chancellor, as chief commissioner, approves and confirms the choice; and the Speaker then, in the name of the commons, lays claim to their ancient and undoubted rights and privileges, and especially to freedom from arrest, and from molestation to their persons and servants, to freedom of speech in debate, and to free access to the sovereign whenever occasion shall require; and also that the most favourable construction may be put upon all their proceedings. The Speaker modestly prays on his own behalf that any error that may occur in the discharge of their duties may be imputed to him alone, and not to his majesty's faithful

commons. The lord-chancellor assents to the Speaker's demands, and the commons return to their house, where the parliamentary oaths are administered, by the chief clerk, to the Speaker standing on the steps of the chair. He then being duly installed, proceeds to superintend the swearing of members. The oath taken by members of the house of commons is the same as that administered to the peers.¹

The Speaker is the first commoner in the kingdom, taking rank after the barons. A salary of £6,000 per annum is attached to the office, for the support of its dignity.² It is now charged on the consolidated fund, and is declared to be in lieu of fees formerly paid to the Speaker, and of an allowance of £5 a day usually paid to him out of the king's civil list. The Speaker, and the money paid to him, are exempt from all taxes, impositions, fees, and charges. He is disabled from holding any office or place of profit under the crown during pleasure.³

By a resolution of the house in the session of 1853, it was resolved that "whenever the house should be informed of the unavoidable absence of the Speaker, the chairman of the committee of ways and means do take the chair for that day only; and in the event of the Speaker's absence continuing for more than a day, do, if the house shall think fit, take the chair in like manner on any subsequent day during such absence." An act was passed in the same session declaring that when a deputy-speaker shall be appointed pursuant to the standing orders, or a resolution of the house, all acts and proceedings shall be as valid and effectual as if the Speaker were in the chair; and warrants, certificates, and other documents signed or published by the deputy-speaker should have the same effect as if they had proceeded from the Speaker.⁴

The house of commons is constituted for business by the presence of forty members. Unless that number, at least,

¹ See *ante*, p. 444.

² By act 30 Geo. III., cap. 10.

³ By 2 & 3 Vict., cap. 105.

⁴ 18 Vict., cap. 84.

are present when the time arrives for commencing business (four o'clock), the Speaker adjourns the house. And if during the sitting the number falls below forty, and the circumstance be noticed by a member, the Speaker will count the house, and if the number be found deficient, will instantly adjourn until the next sitting day.¹

The attendance of members is enforced by ancient statutes;² but at the present day, and on ordinary occasions, the attendance is left to the discretion of the members, and their sense of the constitutional obligation they lie under to attend to their duties in the house. But the attendance of all the members may be enforced by a call of the house, on a day named,—on which day the members who do not attend, or make sufficient excuse, are liable to be committed to the custody of the serjeant-at-arms, and to the payment of the fees incident to the commitment. When members require a long absence, they usually apply “for leave of absence,” for reasons given.³

The chief officers of the house, besides the Speaker, are the Clerk of the House, the Clerk-Assistant, the second Clerk-Assistant, and the Serjeant-at-Arms, all appointed by the crown.⁴ The house appoints one of its members to preside over the house when it sits in committee, who is called the Chairman of the Committee of Ways and Means. His office continues during the session. In the absence of the Speaker from indisposition, the chairman of committees takes the chair by virtue of a standing order made in 1853; or until the house, in case of the Speaker's con-

¹ May's Parliamentary Practice.

² 5 Rich. II., cap. 4, and 6 Hen. VIII., cap. 16.

³ *Idem*, pp. 194–197.

⁴ By 52 Geo. III., cap. 11, the clerk of the house of commons had the nomination or appointment of all the clerks in his department, with the power of suspension or removal. But now, by the act 19 Vict., cap. 1 (1856), the clerk-assistant and second clerk-assistant shall hereafter be appointed by the sovereign, by warrant under his royal sign-manual; and every present and future clerk shall be removable only by the king upon an address of the house of commons for that purpose.

tinued absence through indisposition, appoints a deputy, as before mentioned.¹

The proceedings of the house are regulated by its Standing Orders, made and alterable of its own independent authority, for the same purposes, in relation to this house, as those of the lords, in relation to their house, before described.² The house also possesses powers and privileges which they exercise for the purpose of securing the independence and the purity of the house, and discharging their constitutional duties. These, which they exercise and enjoy in common with the house of lords, will be hereafter noticed. We will only now refer to those peculiar to the house of commons.

The power to decide in controverted elections was exercised by the crown up to the reign of James I., and we have described the conflict with that king, which ended in at least a partial acknowledgment of the commons' right; the king having been unwilling totally to relinquish a power which gave the crown much influence in selecting the members of the house.³ When the power was at last conceded exclusively to the house, controverted elections were determined by a majority of the house, and the decisions became mere party questions. In 1770 a new system was introduced by an act which was passed, by the influence of Mr. Grenville, and since known as the Grenville Act, by which disputed elections were referred to, and decided by, a committee of eleven members, selected by ballot. But this plan did not exclude partiality and incompetence, and it was put an end to in 1848, when the existing system was substituted by act of parliament.⁴ At the beginning of every session the Speaker appoints, by warrant, six members of the house as "the general committee of elections." To this committee all petitions against the return of members, on the score of irregularity, bribery, or any cause, are referred; and it is their duty to choose a committee for the trial of such petitions. The committee are sworn "well and truly to

¹ By 18 Vict., cap. 84.

² See *ante*, p. 453.

³ See *ante*, p. 234.

⁴ 11 & 12 Vict., cap. 98.

try the matter of the petition referred to them, and a true judgment to give according to the evidence." The proceedings are conducted as a court of justice ; counsel attend for the various parties concerned, the witnesses are examined on oath ; and the committee is empowered to order payment of costs in cases where the petitions, or the opposition to them, are found frivolous and vexatious.¹

The parliament has by an act established a tribunal "for more effectual inquiry into the existence of corrupt practices at elections for members to serve in parliament." Upon an address of both houses of parliament, representing that a committee of the house of commons appointed to try an election petition—or to inquire into the existence of corrupt practices at an election—have reported that corrupt practices have, or that there is reason to believe that they have, prevailed at such election ; and praying inquiry by persons named in the address (being in England or Ireland barristers, and Scotland advocates of not less than seven years' standing, and not being members of parliament, or holding any office or place of profit under the crown other than that of recorder of a city or borough), it shall be lawful for the sovereign, by warrant under his royal sign-manual, to appoint such persons to be commissioners for the purpose of making inquiry into the existence of corrupt practices. The commissioners, with secretary and clerks, are to conduct the inquiry at or in the neighbourhood of the place which is the subject of it ; and there are provisions in the act for compelling the attendance of witnesses, and paying their expenses, and administering oaths. Any person who has been engaged in any corrupt practices at, or connected with, the place, and who being examined as a witness, makes a true discovery, to the best of his knowledge, touching all things to which he is examined, is freed from all penal actions, forfeitures, punishments, disabilities, and incapacities, and all criminal prosecutions to which he may have become liable, on his obtaining from the commissioners a certificate

¹ By 15 & 16 Vict., cap. 57.

that he has made a true disclosure. If corrupt practices are found to exist, the commissioners may carry back the inquiry to the last previous election; and if found to have existed there, they may make retrospective inquiries, as far back as they think fit. They are required to report to the crown the result of the inquiry, which must be laid before parliament, if sitting, within one month; if not, within one month after its next meeting.

The power of impeachment has been traced before, from its origin to its modern exercise.¹ It needs only to be recorded here as a great instrument which the constitution has placed in the hands of the commons for the punishment of the delinquencies of ministers of the crown.

The house enjoys the privilege of access to the sovereign, to present an address, with their Speaker at their head. But it is not enjoyed by individual members.

The legislature has latterly extended the power of committees of the commons in legislating on *private* bills. The house of lords' committees have always examined the witnesses on oath, the witnesses being previously sworn at the bar of the house; but the committees of the commons took the evidence without the sanction of an oath. An act of the session of 1858² has removed this distinction between the two houses, by enacting that any select committee of the house of commons, to which any private bill is referred by the house, may examine witnesses upon oath upon matters relating to such a bill, and for that purpose may administer an oath to any witness. A committee of the lords, also, may administer oaths to the witnesses, instead of the formality of swearing them at the bar.

A member cannot resign his seat;—he can only retire by disqualifying himself. That is done, practically, without difficulty, by applying for a nominal office under the crown,—usually that of steward of the Chiltern Hundreds, which is granted almost of course by the treasury; being resigned as soon as the purpose has been effected. Nor can the house

¹ See *ante*, pp. 456.

² 21 & 22 Vict., cap. 78.

of commons expel its members on grounds not warranted by the general law. The struggle with John Wilkes, expelled in 1764, as being the author of a seditious libel, terminated in a resolution in 1769, that the proceedings should be expunged from the journals "as subversive of the rights of the whole body of electors of this kingdom."¹

It is often debated whether a member of the house of commons should consider himself as the delegate of his constituents, or as elected to support the general body of the nation. In a parliament held in the reign of Henry IV., it was declared, as we have seen,² that the knights, citizens and burgesses are the procurators and attorneys of the whole people of the kingdom; which, there can be no doubt, is the sound constitutional principle,—and to this extent, also, that the members are representatives of the non-electors of the kingdom, as well as the electors. The functions and duties of a member cannot be better explained and enforced than in the words of Mr. Burke, in an address delivered by him, in 1774, to the constituency of Bristol, on behalf of himself and his colleague, at the time of their election as members for that city. "To be a good member of parliament is, let me tell you, no easy task, especially at this time, when there is so strong a disposition to run into the perilous extremes of *servile* compliance, or *wild popularity*. To unite circumspection with vigour is absolutely necessary; but it is extremely difficult. We are now members for a rich commercial *city*; this city, however, is but a part of a rich commercial *nation*; the interests of which are various, multiform, and intricate. We are members for that great *nation*, which, however, is itself but part of a great *empire*, extended by our virtue and our fortune to the farthest limits of the east and west. All these wide-spread interests must be considered, must be compared, must be reconciled if possible. We are members for a *free country*; and surely we all know that the machine of a free constitution is no simple thing; but as intricate and as deli-

¹ 38 Commons' Journals, 977. May's Parl. Practice, pp. 459 and 54.

² See *ante*, p. 104.

cate as it is valuable. We are members in a *great and ancient Monarchy* ; and we must preserve religiously the true legal rights of the sovereign, which form the key-stone that binds together the noble and well-constructed arch of our empire and our constitution. A constitution made up of *balanced* powers must ever be a critical thing. As such I mean to touch that part of it which comes within my reach.”¹

¹ Burke's Works : ‘Appeal from the New to the Old Whigs.’ The house of representatives of the United States, by an act for the apportionment of representatives amongst the several states according to the Sixth Census, was composed, from and after the 3rd of March, 1843, of 223 representatives, divided unequally amongst twenty-six states, in the ratio of one representative for every 76,680 persons in each state, and of one additional representative for each state having a fraction greater than one moiety of such ratio. The house is elected every second year, by the electors in each state having the qualifications for electors of the most numerous branch of the state legislature. No person can be a representative who has not attained the age of twenty-five years, and been seven years a citizen of the United States, and who is not, when elected, an inhabitant of the state in which he is chosen. The house of representatives chooses its Speaker and other officers ; and has the sole power of impeachment. The senators and representatives receive a compensation for their services, paid out of the treasury of the United States. They are in all cases, except treason, felony, and breach of the peace, privileged from arrest during the session ; and for any speech or debate, in either house, they cannot be questioned in any other place. No senator or representative can be appointed, during the time for which he was elected, to any civil office under the authority of the United States, created, or the emoluments of which shall be increased, during such time ; and no person holding office under the United States, can be a member of either house, during his continuance in office. Bills for raising revenue must originate in the house of representatives, but the senate may propose or concur with amendments as in other bills. (Constitution.)

CHAPTER IV.

THE HIGH COURT OF PARLIAMENT AND PARLIAMENTARY GOVERNMENT.

Sovereignty of Parliament in Legislation and Government.—Public and Private Legislation.—Mode of Procedure.—Bills brought in.—First and Second Readings.—Committees.—Third Reading.—Transmission to the other House.—Amendments.—Conference.—Royal Assent.—Parliamentary Government.—Relations between the Crown and the Parliament.—Triennial Act.—Septennial Act.—Annual Supplies.—Estimates.—Voting Supplies.—Consolidated Fund.—Committee of Supply.—Interpellation of Ministers.—Committee of Ways and Means. Budget.—Supplies Voted for one Year.—Appropriation Act.—Financial Officers.—Exchequer.—Mode of issuing Money.—Gross Revenue paid into Exchequer.—Annual Financial Accounts.—Mutiny Act, and Acts for raising Army and Navy.—Ministers Selected from Parliament.—Power to Interfere with the Crown.—Modes of Proceeding against Ministers.—Privileges of the Houses.—Freedom of Speech.—Publication of Parliamentary Papers; of Debates and Votes.—Power of Commitment.—Breaches of Privilege.—Privilege of Members from Arrest.

HAVING traced and considered the prerogatives and duties of the king, as the executive chief magistrate,—himself irresponsible but always acting through responsible ministers,—and the constitution and special functions and duties of the houses of lords and commons,—we have next to consider them in action, as the Imperial Parliament of the United Kingdom of Great Britain and Ireland, composed of the sovereign and the three estates of the realm,—the lords spiritual, the lords temporal, and commons,—and employed in legislation and government.

The high court of parliament, when assembled and duly

opened by the king as before described, is endowed with sovereign authority in matters of legislation. The extent of its legislative power cannot be better described than in the words of Blackstone. "It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, revising, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal; this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new-model the succession to the crown, as was done in the reigns of Henry VIII. and William III. It can alter the established religion of the land, as was done in a variety of instances, in the reigns of Henry VIII. and his three children. It can change and create afresh even the constitution of the kingdom and of parliament themselves, as was done by the Act of Union, and the several statutes of triennial and septennial elections. It can, in short, do everything that is not naturally impossible; and, therefore, some have not scrupled to call its power by a figure rather too bold,—the omnipotence of parliament."¹

But this description, comprehensive and even verbose as it is, does not include the inquisitorial functions of parliament. These functions comprehend the power of controlling the executive government, by inquiry into its acts and measures;—of interfering with advice and admonition on all occasions when such acts or measures, or intended acts or measures, are disapproved, or considered to be impolitic, uncalled for, defective, insufficient, or unsuitable, and of requiring them to be modified, altered, amended, or abandoned,—of regu-

¹ Blackstone's Commentaries, vol. i. cap. 2, p. 161. Blackstone published his work in 1765. We may infer that parliamentary government had attracted no peculiar attention at that time.

lating the expenditure of the nation, the extent of its civil and military establishments, and the sources from which the revenue is to be derived for carrying on the government and national affairs,—and of requiring the crown to remove from its councils ministers disapproved by parliament. These important functions have been gradually acquired and moulded into a system, known as Parliamentary Government.

We shall consider the legislative and inquisitorial functions separately.

The business of legislation is twofold,—public and private ; the one concerns the nation, the other, private persons. The general system of procedure in both houses is very similar, as regards both public and private legislation. Its chief feature is the establishment of successive stages, at certain intervals, contrived to give opportunities for deliberation, for opposition, for reconsideration, for bringing forward petitions by the people, and for debate on the principle and details of the measure ; at each of which stages the measure may be brought to the test of a majority of votes. These stages are regulated by the standing orders of the respective houses. Sometimes, in matters which are, as it were, carried by acclamation, the standing orders which regulate legislation are dispensed with by a vote of the house ; but on all other occasions, they are strictly adhered to ; and they are approved as affording security against hasty, unjust, or ignorant legislation ; although they often put it in the power of a minority to delay, and sometimes to defeat a measure by motions and divisions at every stage. In private legislation there are preliminary proceedings, arranged so as to give the fullest notice and protection to private individuals whose property or private rights are proposed to be taken by companies, or corporations, or for purposes of public advantage.

The first step in each house is to bring in a bill. In the house of lords any peer may present a bill, and have it laid on the table ; but in the commons, the leave of the house must be obtained on motion. The bill, when brought in, is

read a first time without opposition. Sometimes, in important and complicated matters, the bill is preceded by resolutions embodying the principles of the proposed law, which are submitted to the house for approval or alteration; and when the resolutions have been voted, leave is given to bring in a bill in accordance with them. Bills relating to general legislation may originate in either house; but money bills, or bills which impose taxation—which fix a pecuniary charge on the people in any shape—or which guarantee a loan,—must be commenced in the house of commons; and even there money bills cannot be introduced unless preceded and authorized by the resolution of a committee of the whole house. So also no bill relating to religion or trade, or the alteration of the laws concerning religion or trade, can be brought into the house of commons until the proposition shall have been first considered in a committee of the whole house, or agreed to by the house.¹ Bills, when brought in, are printed, and circulated amongst the members.

The second reading follows, upon a day named by the house for the purpose. That is the most important stage of the bill. Its principle is then debated, and the strength of the opposition, when a bill is not approved, is then brought to bear against it. If carried through that stage, the principle is considered to be admitted, and as not to be directly questioned in the future stages. There are three modes of rejecting a measure on the second reading. An opponent may move the previous question; he may propose to adjourn the second reading to a distant or impossible day; or he may move a direct vote against the motion for the second reading. The previous question implies that the measure is ill-timed; the postponement, or rejection, condemns the principle of the bill. In the second reading, and on all occasions except when the house is in committee, a member is restricted to one speech, except the proposer of the motion, who is allowed to speak in reply.

The committal of the bill is the next stage; it may be

¹ Standing Orders, 9th and 30th of April, 1772.

committed to a committee of the whole house, or, by a special vote, to a select committee. In the former, the Lord-Chancellor, in the lords,—and the Speaker, in the commons,—relinquish their chairs in favour of the chairman of committees, who presides ; and when the house is in committee the members are not restricted to one speech, as on the second reading, and other stages ; nor is it necessary that a motion should be seconded.¹ On the motion “that the Speaker do now leave the chair,” for the purpose of entering into committee, a motion may be made that the house resolve itself into committee this day three months ; which, if carried, would have the effect of defeating the bill. In committee the clauses of the bill are severally submitted for approval ; and amendments may be moved ; any which are not acceded to by the managers of the bill being decided by a division of the committee. If a bill is not completed at one sitting, the chairman *reports progress* ; that is, reports to the house how far the committee have proceeded, and “asks leave to sit again.”

When the bill has been carried through the committee, the chairman reports it, with its amendments, to the house, and on the bringing up of the report an opportunity is again afforded for discussion, on the question whether the amendments shall be agreed to or rejected. If partially agreed to, or modified, or if new amendments be proposed and carried, the bill is recommitted, in order that the amendments, as altered, may be submitted to the committee of the house. If the amendments make it necessary, the bill is reprinted as amended.

The third reading is the next stage, when the entire measure is brought before the house for final consideration. But even at this stage amendments may be moved, and if

¹ In a committee of the house of lords, the lord-chancellor leaves the woolsack, and the chairman of committees presides in his stead, sitting at the clerk's table. In the house of commons, the Speaker leaves the chair, and the chairman of committees presides at the table, under which the mace is placed by the serjeant-at-arms.

carried, they are added to the bill, which is then finally disposed of by a motion "that the bill do now pass."

The bill having passed either house, is sent to the other, where it goes through the first, second, and third readings, and all the intermediate stages; at each of which it may be opposed, and subjected to the test of a majority of votes. The lords send down their bills to the commons by one of the judges, or a master in chancery; the commons send their bills to the lords by the member who had charge of the bill, or the chairman of committees, who is accompanied to the bar of the house of lords by other members. If either house make an alteration in the bill of the other house, the bill is returned with the amendments; and a day is fixed by the house in possession of the bill, for proceeding to the consideration of the amendments proposed by the other house. On the orders of the day being read, a motion is made either "that the house do agree with the amendments," or, on the contrary, "that the house do disagree to the amendments;" each amendment (if more than one) being put to a separate vote. If a motion for disagreeing to the amendments is carried, a message is sent to the other house demanding a conference; and a committee is appointed on motion, to draw up reasons for disagreeing from the amendments, and to present them at the conference; and from twenty to thirty members, most prominently connected with the subject in dispute, are named in the resolution as the committee. The amendments then become the subject of conference between members selected from both houses, the commons sending to the conference twice as many as those sent by the lords. The conference is usually held in the Conference Chamber, where the lords, sitting with their hats on, receive the commons standing, uncovered. There is no discussion, but merely the exchange of written documents, containing the reasons, the one for adhering to, the other for rejecting, the amendments; unless it be a free conference, when speeches are made. The result of the conference—whether the amendments were agreed to, modified,

or rejected—is reported to each house, and submitted to its decision.¹

When both houses have passed a bill through all its stages, it is ready for the royal assent, which the sovereign gives either in person or by commission, and when given, the bill becomes “an act of parliament.” Thus the king and the three estates concur in every law; which is expressed “to be enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by the authority of the same.”²

But as connected with constitutional government, those functions of parliament which are employed to check and control the executive power, are the most important and interesting. As a legislative body, it is employed in deliberations on the expediency of improvements in the social condition of the people; which result in the making, amending, or repealing of laws, and affixing penalties for their infraction. The other functions are not legislative, but inquisitorial,—to inquire into, to control, and to direct the measures of the executive government—not by any act of executive power, but by the expression of the opinion of the houses, either together or separately, on the policy or the measures—actual or intended—of the ministers of the crown—to express that opinion in addresses to the sovereign; and if necessary, to refuse to pass those legislative acts

¹ Only a general outline of the forms of parliamentary procedure is here attempted; more ample details will be found in Mr. May’s *Parliamentary Practice*.

² A money act has a peculiar form, treating the supply as the gift of the commons alone. “Most gracious sovereign; we, your majesty’s most dutiful and loyal subjects, the commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, towards making good the supply which we have cheerfully granted to your majesty in this session of parliament, have resolved to grant unto your majesty the sum hereafter mentioned; and do therefore most humbly beseech your majesty that it may be enacted; and be it enacted by, and with the advice of the lords spiritual and temporal,” etc.

without which the measures of the ministers of the crown would be incomplete. These important functions have been invigorated by that course of political events which have placed the crown in dependence upon the parliament and especially on the house of commons, for the means of carrying on the executive government. It will be necessary therefore to consider the modern position of the crown and its ministers in relation to the parliament.

The long intervals between parliaments, during which, in the old times, the king reigned supreme, caused much dissatisfaction to our ancestors, who desired frequent parliaments, that they might get the crown under the influence of parliament, and might obtain redress for those grievances and abuses which flourished with impunity when the sovereign was uncontrolled.

The irregularity and long interruptions in the assembling of parliaments in the reigns of the Tudor and Stuart kings, have been shown in the former part of this work. The Triennial Act passed in the Long Parliament was repealed after the Restoration, and another Triennial Act was passed in the reign of William and Mary. That act, like its predecessor, was founded on the ancient statutes,¹ and it asserted that "frequent and new parliaments tend very much to the happy union and good agreement of the king and people." It enacted that "thenceforth a parliament should be held once in three years at the least; that within three years, at the furthest, from the determination of every parliament, legal writs should be issued, under the direction of the king, for calling, assembling, and holding a new parliament; and that no parliament should have any continuance longer than for three years only at the furthest."² This was again altered by the Septennial Act now in force, which passed under the apprehension of invasion from the Pretender. After reciting that triennial parliaments had proved "very grievous

¹ See *ante*, p. 123.

² 6 William and Mary, cap. 2: "An Act for the frequent meeting and calling of Parliaments."

and burdensome, by occasioning much greater and more continued expenses in order to election of members, and more violent and lasting heats and animosities than ever were known before, and if continued, might probably, when a restless and popish faction were designing and endeavouring to renew the rebellion by invasion from abroad, be destructive to the government," enacted that parliaments shall have continuance for seven years, and no longer, unless sooner dissolved by the king.¹

But that which our ancestors were unable to ensure by the ancient laws, and which was not ensured by the more modern triennial or septennial acts—that parliament shall be assembled every year—is now become a necessity imposed on the crown by the system which has grown up since the Revolution, of submitting to parliament annual estimates of the expenditure of the government, and voting the supplies to the crown for one year only. The parliament which met in 1690, resolved to change the system of voting the revenue to the king for life; and acts were passed granting and renewing the duties of excise and customs for short terms, of three, four, or five years; and appropriating portions of them to specific purposes. William III. disliked the change, and his ministers represented it as most uncourteous to entertain a jealousy of him, which had not been shown towards his predecessors James and Charles. "But it was taken up (says Burnet) as a general maxim, that a revenue for a certain and short term was the best security that the nation could have for frequent parliaments."²

The providing of the finances for the year, and appropriating them for the use of the government, are important parts of the business of the house of commons. The house is put in motion by the ministers of the crown; for by a standing order the house of commons will receive no petition for any sum of money relating to public service, nor pro-

¹ Geo. I. stat. 2, cap. 38, 1714.

² Burnet's Own Times, book 4. Smollett's History of England, vol. i. p. 19.

ceed on any motion for granting any money, but what is recommended by the crown ;¹ and by another standing order, "the house will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the crown, but in a committee of the whole house."² The usual course is for the king to signify to the commons in his speech opening parliament, that he has directed the estimates of the current year to be laid before them, upon which the commons pass a formal resolution "that a supply be granted to his majesty ;" and the house appoints a day "to consider of the supply to be granted to his majesty" and addresses the king to order the estimates for the current year to be laid before them.³

The estimates prepared in detail are brought into the house by the ministers, and are printed and circulated amongst the members ; and the house, soon afterwards, resolves itself into COMMITTEE OF SUPPLY, when the Speaker resigns the chair, which is taken by the chairman of committees. The estimates submitted to the committee are arranged under the several classes of army, navy, and civil or miscellaneous estimates ; the latter including the expenses of collecting the revenue. These comprehend all the national expenditure, except the interest of the national debt, and the civil list provided for the sovereign at the commencement of the reign, which are not annually submitted to parliament, but are paid by the commissioners of the treasury by the authority of an act passed in 1816.⁴ It directs that all the revenue derived from taxes or otherwise, in Great Britain and Ireland, shall be carried to, and shall constitute one general fund, called the CONSOLIDATED FUND of Great Britain and Ireland. It is charged, first, with the payment of the interest of the national debt ;—next, with the salaries

¹ Standing Order, 11th of December, 1706 ; amended 25th of June, 1852.

² Standing Order, 29th of March, 1707.

³ May's Parliamentary Practice, p. 434.

⁴ 56 Geo. III. cap. 98.

and other charges of the sovereign's civil list establishments; and after these, with any charges made payable out of the previously existing, separate consolidated funds of Great Britain and Ireland,—of which charges there do not appear to be any remaining. After payment and satisfaction of these charges, the consolidated fund shall be indiscriminately applied to the service of the United Kingdom, as the parliament shall direct.

The Committee of Supply, therefore, deals only with the surplus of the consolidated fund, not required for the permanent charges. In these committees, which sit at intervals during the session, the ministers of the crown, in their several departments, explain the estimates, which are submitted in detail to discussion, and each portion to a vote,—that a sum not exceeding a sum named be granted, for the purpose stated in the estimate. Each proposal may be met by a motion to omit or reduce any item of the vote, the question being decided by the majority in the usual manner. The estimates as voted are reported to the house, which must afterwards agree to the report.

When the motion is made for going into committee of supply, is the constitutional time to require from the ministers of the crown, explanations of the state of foreign affairs, or of other subjects of importance, on which full communications have not been made to the house. The diplomacy and negotiations of the ministers may be, and usually are, carried on in secret, and often in the recess of parliament; but on the reassembling of parliament, the constitution requires that those invested with the executive authority should explain and justify to parliament the nature and objects of their policy, and the state of their relations with foreign nations, in order that the house may express its opinion on such affairs, and by vote or resolution signify it to foreign nations and to the country.

Such subjects, however, may be (and usually are when they are of much importance) brought forward by motions, which any member is entitled to propose, and for which

days are fixed. Notice of such motions must be given and entered in the order-book.¹ There is also a constitutional privilege, of putting questions to the ministers of the crown, on the motion which is always made on Friday, by one of the ministers, for adjournment till Monday. This is the time for questions which can be shortly put and shortly answered; and on subjects not of sufficient importance to be brought forward, in a formal manner, on motion.

When the estimates have been voted (or, in actual practice, when the naval and military estimates, which are the largest and most variable, have been passed), and the house of commons has thus determined the extent of the provision to be made for the national service during the year, the house resolves itself into a COMMITTEE OF WAYS AND MEANS, at which it becomes the duty of the chancellor of the exchequer to submit to the house, in detail, resolutions for voting the taxation by which the money required by the estimates is to be raised. He introduces these resolutions to the house by a speech which is called "the Budget;" in which he reviews the financial position of the country; and estimates the probable returns to be obtained from the several sources of income; and with reference to the estimates of the year, he proposes to repeal or reduce, or to impose new or additional taxes, as the exigencies of the case require. The sources of income are not, however, the subject of annual vote; the taxes being now chiefly permanent for a given period, or until altered by parliament, under the several classes of customs, excise, stamps, taxes (land and assessed, income and property), post-office, crown lands, and miscellaneous receipts; and it is, in general, some modification, or reduction of, or some addition to, one or more of these classes of taxation, that the annual budget proposes.

Committees of ways and means sit at intervals, at which the resolutions proposed by the chancellor of the exchequer in his budget are severally submitted to the committee, and proposed by a vote,—that towards raising the supply granted

¹ May's Parliamentary Practice, p. 21.

to his majesty, there shall be charged and paid the duty stated in the resolution. The resolutions when voted by the committee are reported to the house; and the report being agreed to, bills are ordered to be brought in by which the resolutions are converted into acts of parliament.

But although the rule with regard to voting taxation for only one year, has been relaxed for public convenience, no plan of expenditure for more than one year can be submitted to the house; nor can the application of the revenue be voted for more than one year. In these committees of supply and ways and means, the independent members of the house of commons exercise the inquisitorial functions pertaining to the house, of inquiring into, opposing, amending, or overthrowing the plans and proposals of the ministers, by the power the house possesses of altering or disallowing the estimates, and of diminishing or refusing the supplies; and thus they indirectly prescribe the course to be taken by the government.

If money be required, during the session, for the public service, acts are passed authorizing the commissioners of the treasury to raise the money voted, in anticipation of the revenue, by exchequer bills, which the Bank of England is authorized to take, and to advance and lend money upon their security, and that of the public revenue when it arrives in the consolidated fund.

But it is not only necessary that all the money required for the public service should be voted by the house of commons, but effect must be given to their votes by an act of parliament. When all the estimates and the ways and means have been voted and passed, a bill is brought into the house of commons, usually near the end of the session, by the chancellor of the exchequer, which, when it has passed through both houses, is called an APPROPRIATION ACT.¹ It enacts

¹ The following is the title of an appropriation act:—"An act to apply a sum out of the consolidated fund, and the surplus of ways and means, to the service of the year 1859, and to appropriate the supplies granted in this session of parliament."

that there shall be issued and applied for, or towards making the supply granted to his majesty for the service of the year —, the sum of £—— (being the balance of the supplies voted, not granted by previous acts), out of the consolidated fund of the United Kingdom; and the commissioners of the treasury are authorized and empowered to issue and apply the same accordingly;—to issue exchequer bills for the amount, bearing interest, and the Bank of England is empowered to take the bills, and to advance or lend money, at the receipt of the Exchequer, upon the credit of the bills, and the growing produce of the consolidated fund. The aggregate sum voted during the session, consisting of the sums granted by previous acts, and the sum granted by the Appropriation Act, is then appropriated to the several services,—to each service, as a gross sum; which is afterwards subdivided in the act between the several branches of the service, according to the estimates voted by the commons. This is done with so much detail, that the items, or several sums appropriated by the act, are not far short of three hundred; and even the supply voted, is not absolutely given; but is only a maximum which the government are not to exceed. The appropriation act permits the transfer of small savings from one item to another in the same service; but in the case of a considerable surplus from acknowledged savings, it must be transferred to the consolidated fund, so that the saving may come under the consideration of parliament.¹

Further progress was made in the financial system in 1834, when the ancient financial officers of the crown were displaced by new officers more immediately responsible to parliament. An act was passed which abolished the ancient offices of auditor and four tellers of the exchequer, and other offices subordinate to them; and in place of them there was appointed a “comptroller-general of the receipts and issue of his majesty’s exchequer;” with an assistant comptroller

¹ See debate on this subject, Hansard’s Parliamentary Debates, vol. cxlix., p. 258, 16th of March, 1848.

² 4 Wm. IV., cap. 15.

and clerks. The powers of the ancient officers were transferred to the comptroller-general, who is required to execute his office in person ; and a day (the 11th of October, 1834) was appointed for the tellers to pay over the balances then in their hands, into the Bank of England, to " the account of his majesty's exchequer ;" and from the same day it was provided that all public moneys which before were paid into the exchequer at Westminster, should be paid into the Bank of England, to the credit of the exchequer, there to form one general fund.

The same act regulates the mode of issuing money to the several departments of the public service. It is effected by a royal order, under the royal sign-manual, countersigned by the commissioners of the treasury, which authorizes and requires the comptroller to place at the Bank of England the sum, or part of the sum, granted by the house of commons to a specific branch of the public service, to the credit of the public accountant of the crown in that branch of service to which the money is to be applied.

But these acts only required the net revenue, after deducting the expense of collection, to be paid into the Bank of England ; and it remained to bring the *gross* income and expenditure under the immediate control and supervision of parliament. That was effected by an act of Queen Victoria,¹ which directed that the charges payable out of the several branches of the public revenue, or on or out of the moneys in the hands of commissioners, or collectors, or receivers of the public revenues, or in or out of the consolidated fund of the United Kingdom, should cease ; and should be charged on, and payable out of the consolidated fund, out of such aids and supplies as should from time to time be provided and appropriated by parliament for the purpose.²

The exercise of the power of parliament is facilitated by

¹ 17 & 18 Vict., cap. 94, 1854.

² The charges of collection of the public revenue are included in the miscellaneous estimates. They amounted in 1858-59 to £4,746,137, including superannuations of revenue departments.

the annual publication of the national accounts. Acts of parliament require the commissioners of the treasury annually to lay before parliament accounts showing the total income of the United Kingdom, for one year, ending on the 31st of March in each year,—of the income of the consolidated fund for every such year, of the actual payments thereout within the year, and of the future annual charge upon the fund, as the same stood at that day,—of the net produce of all the permanent taxes within the year,—of the arrears and balances due from all public accountants,—of the exports and imports of the United Kingdom, and of the shipping registered in or belonging to the several ports of the kingdom within the year,—of the public funded debt, and the reduction thereof,—of the unfunded debt—and an account showing how the moneys given for the service of the preceding year have been disposed of. These accounts are to be laid before parliament on or before the 30th of June, if parliament is sitting; if not, within fourteen days after its next meeting. They are immediately afterwards printed and circulated amongst the members, and are procurable by the public at the cost of one shilling.¹

For the purpose of ascertaining the existence of any surplus revenue, which would be applicable to the reduction of the national debt, the commissioners of the treasury are required, within thirty days after the 31st of March, the 30th of June, the 30th of September, and the 31st of December, respectively, to cause accounts to be made showing the actual receipt and expenditure of the United Kingdom, in the four quarters for the whole of the year ending on such several quarter-days. The accounts of the income and charge of the consolidated fund, and of the comptroller-general of the exchequer, are required to be made up to the same days.²

By these arrangements the whole revenue of the country, in its receipt and expenditure, is, directly or indirectly,

¹ 56 Geo. III., cap. 98, amended by 17 & 18 Vict., cap. 94.

² 10 Geo. IV., cap. 27; 17 & 18 Vict., cap. 94.

completely under the control of parliament; and the estimates and supplies being voted and appropriated for one year only, the machinery of government is, as it were, wound up for the year only; and if the crown, although it is under no positive law to do so, should not call parliament together in the following year to keep the machinery in motion, the public works would stop.

But parliament has not relied solely even on the annual voting of the estimates and supplies, to ensure its annual assembly. The Mutiny Act, by which the army is raised and maintained in discipline,—the Marine Mutiny Act, which provides for the regulation and discipline of the royal marines and navy,—and the Act for the Manning of the Navy, are passed for only one year; and if parliament were not re-assembled in the following year, and these acts were not renewed, the army and navy would be disbanded.

The Mutiny Act regulates the number of men to be raised for the army, and thus the house of commons exercises the power of determining that important question of national policy. Its preamble, which is still continued in the ancient form, shows the jealousy of a standing army. It recites, “that the raising or keeping of a standing army in time of peace, unless with the consent of parliament, is against law; and that no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by judgment of his peers, and according to the known and established laws of this realm.” Provisions then follow for embodying the army, and placing it under martial law for one year.

The necessity imposed on the crown to assemble parliament annually, has imposed on it another necessity, that the sovereign shall select ministers who are able to command a majority in the house of commons,—in other words, to induce a majority of the house to vote the estimates and supplies, and to pass the annual acts for the maintenance of the army and navy. This has also made it necessary that the

chief ministers, or those upon whom the crown chiefly depends, should be members of the house of commons, where their presence is indispensable to explain the policy and intentions of the government, and to answer the objections, and to meet the attacks, of the Opposition. These necessities have given great power and influence to the house of commons in the affairs of government. "But (says Burke) if the house of commons limits the monarchy, it secures and strengthens it."

"It is the privilege (he also observes) of the house of commons to interfere by authoritative advice and admonition upon every act of executive government, without exception." The house of lords, as the great council of the crown, always possessed this privilege; and now the jurisdiction of the two houses is in this respect co-ordinate. The communication between the crown and the houses takes place, on the part of the crown, by a message to the house, which the house, without delay, takes into consideration, and answers by an humble address. The houses originate any advice by an humble address to the crown. But the policy or the conduct of ministers is more frequently attacked and brought before the house by a party motion,—such as for the production of papers or correspondence,—for a select committee of inquiry,—by a resolution disapproving of the ministerial measures, or by a direct vote of censure;—when the real question is, not whether a certain act or policy was judicious, but whether the government shall be dismissed.

The ministers usually oppose such motions by attempting to show that the production of papers or correspondence would injure the treaty or arrangement in progress, to which they refer; or that there are no evils of sufficient magnitude to call for inquiry; or that sufficient means have been taken to remedy those evils, or that they will be best cured by other means than by a resort to the inquisitorial power of the house. If the ministers are outvoted upon a division of the house, the defeat is generally followed by

the resignation of their offices, in which case the crown has to form a new ministry; or they may obtain the consent of the crown to dissolve parliament, and to appeal to the people on the question between them and their opponents. But if the ministers, notwithstanding their defeat, should continue to hold office; or if they should have been guilty, whilst in office, of unconstitutional conduct, or of any criminal practices, they then may be removed by several parliamentary methods. If the design be to punish as well as to remove, parliament may proceed by impeachment, or by bill of attainder, or bill of pains and penalties; from which, as we have seen, it is not in the power of the crown to shelter its ministers, it being provided by the Act of Settlement that "no pardon under the great seal shall be pleadable to any impeachment by the commons in parliament." When the design is to remove only, it may be carried into effect by an humble address to the sovereign that he would be graciously pleased to remove his ministers from his councils.

The methods of proceeding by impeachment, or by bill of attainder, or bill of pains and penalties, require that some criminal charge should be alleged, and that it should be supported by legal proof. But in proceeding by address to the crown, no crime or delinquency need be charged; it is sufficient to allege the general incapacity of the ministers to administer the public affairs for the advantage of the country; and no proof is required if the allegation proceeds from a majority of the house.

The important business and various duties entrusted by the constitution to the two houses of parliament, require that they should be invested with large powers and privileges. These they enjoy by virtue of "the law and custom of parliament," collected from the rolls of parliament, and by precedents, and continued experience. But it is essential that the privilege should be according to ancient custom; and in 1704, the lords passed a resolution, assented to by the commons, "that neither house of parliament have power,

by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of parliament.”¹ Any extension of their privileges can, therefore, be obtained only by act of parliament. One of the most important of the privileges is freedom of speech,—as to which the Bill of Rights declared “that the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.”² This privilege protects the members of both houses from all accountability in the courts of law, for anything said in their places in parliament; but if a member proceed to publish his speech, or even to correct a newspaper report of it, and it contains libellous matter, such a publication brings his conduct within the powers of the courts of law; and he is responsible for the publication, although not for the speech.³ Publicity is essential to the success of representative government, and is now easily effected through the public press. But it was a long time resisted; and even now the publication of the debates by the newspapers or otherwise, is against the standing orders of the houses, although tacitly permitted by them, whilst the debates are correctly and faithfully reported; but if they are reported *malâ fide*, the printer may be called before the house, and punished for the publication, as for a breach of privilege.⁴ Publication, also, of the divisions of both houses, with the names of the members who voted on each side, on every question, is a matter of equal importance; and together they furnish the parliamentary constituency and the country with a complete daily record of the proceedings of parliament, and the part taken by the peers and representatives.⁵

¹ 14 Commons’ Journals, 560.

² *Ante*, p. 431.

³ 1 Espinasse’s *Nisi Prius* Cases, 228. 1 Maule and Selwyn’s Reports, 278.

⁴ May’s *Parliamentary Practice*, p. 80.

⁵ The contest which in the reign of George III. ended in establishing the practice of publishing the debates of the two houses of parliament,

The order of the houses of parliament for the printing and publishing their reports and papers, was deemed in 1836 to be a protection to the printer in an action against him for libellous matter contained in them. Printers and officers of the house of commons were afterwards engaged in a long course of litigation, under the protection of the house, to determine the nature and extent of the parliamentary authority.¹ At length the questions involved in the proceedings were settled by "an act to give summary protection to persons employed in the publication of parliamentary papers." It recites that it is essential to the due and effectual exercise of the functions and duties of parliament, and to the promotion of wise legislation, that no obstruction should exist to the publication of such reports, papers, votes, or proceedings of either house of parliament, as such house of parliament may deem fit or necessary to be published; and it enacted that proceedings, criminal or civil, against persons for the publication of papers printed by order of either house of parliament, shall be immediately stayed on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either house of parliament. Proceedings are also to be stayed, if commenced on account of the publication of a copy of a parliamentary paper, upon the verification of the correctness of such copy. And in proceedings commenced for printing any extract from, or abstract of, a parliamentary report or paper, the defendant may give the report in evidence, under the plea of the general issue, and prove that his own extract or abstract was published *bonâ fide*, and without malice; and if such be the opinion of the jury, a verdict of "not guilty" will be entered.²

made a change of transcendent importance in the working of the constitution, without the passing of any law." (Earl Grey on Parliamentary Government, p. 10.)

¹ See the case of Stockdale and Hansard, and the subsequent litigation described in May's Parliamentary Practice, pp. 159-162.

² 3 & 4 Vict., cap. 9.

Breaches of the privileges of the houses, resistance to their orders, and obstruction of their officers in the execution of the orders, are punishable as contempts of the authority of the house, by commitment to the custody of the serjeant-at-arms, or to the Tower or other prison. The proceeding cannot be questioned in any court of law; the adjudication of the house being a sufficient judgment, and the warrant of the Speaker a sufficient commitment. The serjeant-at-arms, in the execution of the Speaker's warrant, may, after notice and demand of admission, break open outer doors, if necessary, in order to execute it.¹ Nor, if the warrant recite that the person to be arrested has been guilty of a breach of privilege, can the courts of law inquire into the grounds of the detention by habeas corpus, but must leave the prisoner to suffer the judgment awarded by the house by whose warrant he stands committed. Nor can the court inquire into the form of the commitment, even supposing it to be open to objection on the ground of informality.² The lords can commit to prison for a fixed time, even beyond the duration of the session; but the house of commons can only imprison until the close of the existing session. The commons, therefore, do not commit for any period of imprisonment; and their prisoners, if not sooner discharged by the house, are immediately released from their confinement on a prorogation, whether they have paid the fees of the serjeant-at-arms or not.³

This power of commitment the houses exercise to punish infraction of their general orders or rules, and disobedience of particular orders; indignities offered to the character or proceedings of parliament; disrespectful or calumniating commentaries or reflections on the conduct of parliament, or its members, and misrepresentations of their speeches in debate. Any infraction of the privileges of parliament, or of

¹ *Bardell v. Abbott*, 14 East, 107; affirmed in error, 4 Taunton, 401.

² Per Lord Chief Justice Abbott; 2 Chit. Rep., 207; 3 Barn. and Ald., 420.

³ May's Parliamentary Practice, 97.

its members, brought to the notice of the house concerned in it, receives immediate attention and generally supersedes all other business.¹

The privileges of the individual members of both houses consist of freedom from arrest in civil suits,² and exemption from service on juries. But the former privilege does not extend to criminal charges, to breach of the peace, nor to contempts of the jurisdiction of the courts of law and equity.³

¹ A minute examination of these privileges is incompatible with this work; but it will be found in Mr. May's work.

² 10 George III., cap. 50.

³ Lechmore Charlton's case, 2 Mylne and Craig, 316, 1837.

CHAPTER V.

THE PEOPLE,—THEIR RIGHT TO ELECT THE MEMBERS
OF THE HOUSE OF COMMONS.

The People.—The Democratical part of the Constitution.—Representation before the Reform Act.—County Qualifications since that Act.—Freeholders of Inheritance.—Freeholders for life.—Copyholders.—Leaseholders.—Occupiers.—Borough Voters.—Occupiers.—Freeholders.—Counties.—Of Cities.—Burgesses and Freemen.—Registration of Voters.—Overseers' Lists.—Duties of Overseers, Constables and Clerks of Peace.—Court of Revising Barristers.—Borough Registration.—Overseers' List.—Town Clerk's List of Freemen.—Claims by persons omitted.—Borough Revisers.—Proceedings at the Poll.—Limits of Counties and Boroughs.—Scotland.—Qualifications of Electors.—Owners.—Life-Renters.—Tenants.—Boroughs and Towns.—Proprietors, Tenants, and Life-Renters.—Registration.—Polling.—Ireland.—Qualification of Voters.—Freeholders.—Lessees or Assignees.—Copyholders.—Counties of Cities and Towns.—Freeholders.—Lessees or Assignees.—Occupiers.—Boroughs.—Occupiers.—Freemen.—Statutes Shortening Elections to One Day in England, Scotland, and Ireland.—For Regulating Soldiers during Elections.—Statutes Regulating Freedom of Choice.

THE powers and duties of the several institutions which form the government having been described, it remains to advert to the governed,—to describe the nature of the political power which the people possess and exercise under the constitution; and the means which they have to influence the legislative and executive institutions to the course of action they desire; and afterwards to show the effect of the constitutional system in the production and preservation of the personal liberty of the people.

The People consist of all persons born within the do-

minions of the crown, at home or abroad, and of persons born out of the dominions, whose fathers, or grandfathers, (by the father's side) were native-born. All these, as natural-born subjects, enjoy, or may acquire, the fullest personal and political rights conceded by the constitution. Aliens may be made denizens by the king's letters-patent, and thus be admitted to domicile in the kingdom, and to enjoy the protection of the laws, and to hold lands; and by act of parliament they may be naturalized, and be qualified to enjoy or acquire all the personal and political rights of native subjects, except being enabled to sit in the privy council, or in either of the houses of parliament, or to take any office of trust, civil or military, under, or any grant of lands from the crown.¹

The chief political power possessed by the people arises from their right of electing representatives, as members of the house of commons. That power is neither inconsiderable, nor remote from the supreme power; for when the crown convenes the parliament, their suffrages decide, by the preponderance of party men elected and returned, what principles of government shall prevail, and, to a great extent, what men shall be, for the time, the depositaries of the executive power. The constitution has not, however, confided this important trust to the whole body of the people; although the representatives, when elected, are the representatives of all.

From the qualified body of electors, also, those are excluded who are exposed to influences likely to prevent free and unbiassed choice. Thus, it is declared by statute that "no commissioner or other officer employed in charging, collecting, or managing the duties of excise, customs, stamps, or houses, or in the post-office (the several departments of the revenue), shall have any vote in the election of members of parliament."²

The ancient principle of elective qualification was, in counties, the ownership of landed property, and in boroughs,

¹ 1 Geo. I., stat. 2, cap. 4.

² 22 George III., cap. 41.

the possession of the corporate franchise or freedom. In the First Part of this work the qualifications were traced from the earliest period of our history to the Reform Act passed in 1832.¹ But the constitutional principle of election had long before that time become deteriorated; and the first operation of the Reform Act was to put an end to what was practically a system of nomination to seats in the house of commons. Many of the ancient boroughs were decayed; and from the paucity of voters to which they were reduced, they had fallen under the power of the great landowners of the vicinity, of peers, or of wealthy commoners,—who caused their sons, or relatives, or political adherents, to be elected, without the shadow of any voluntary choice by the voters. The Reform Act deprived the boroughs in that dependent condition, of the right of returning members; it restricted others, whose population in point of numbers did not justify the continuance of the right of electing two members, to one only; and it transferred the rights of election, thus vacated, to more populous constituencies,—dividing some of the counties into two, and, the county of York, into three divisions, with two members to each,—giving three and two members to other counties which before respectively returned two and one only,—and giving the right of returning members to boroughs of large population, before unrepresented, and to new boroughs and one new county called into existence by the act.

The act also dealt with the qualifications of the electors, which, at the time it was passed, remained as under the old statutes; confined in counties to freeholders possessing freehold property of the yearly value of forty shillings, (excluding copyholders, and leaseholders for years,) and in cities and boroughs, confined in most cases to the freemen or bur-

¹ See *ante*, p. 124. The constitution of the United States does not prescribe any general principle of qualification for the electors to the house of representatives. Each State conducts the election of its representatives, and the constitution only declares that “the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.” (Article 1, sect. 2.)

gesses of the corporations, in respect of their personal franchise, although in some cases connected with burgage tenure, or the ownership of houses within such cities or towns as were counties of themselves; and in a few cases extended to a species of universal suffrage,—to the potwallopers, or all those male persons who, in addition to the regular inhabitants of the borough, had resided six months, whether as housekeepers or lodgers, within the precincts of the borough, without having been chargeable as paupers in any parish for twelve months.

The Reform Act¹ was framed on the ancient principle of ownership of lands and tenements; but extended to copyhold property as well as to freehold; and to ownerships of a lower legal grade than tenures for life. In cities and boroughs the principle was lowered to proprietorship by occupation merely; by which the ancient corporate franchise possessed by freemen was placed generally in a position of inferiority, in regard to numbers, to the franchise obtained by occupation; and it was otherwise much disfavoured by the act, whose operation tends to a gradual diminution, and finally an extinction of the ancient franchise.

Voters for Counties.

The elective franchise for counties is attached exclusively to lands and tenements, and is to be exercised by persons (being male persons of full age, and not subject to any legal incapacity) having lands and tenements within the county, or division of county, of the several tenures following, when they have been registered as voters in the manner hereafter explained.

1. FREEHOLDERS OF INHERITANCE of the yearly value of not less than forty shillings. These are not mentioned in the Reform Act; and the right to vote remains as expressed by the old statute of 1432,² which was not repealed.

¹ 2 William IV., cap. 45: "An Act to amend the Representation of the People in England and Wales." June 7, 1832.

² 10 Hen. VI., cap. 2. See *ante*, p. 128.

Therefore freeholders who are the absolute owners of their property (seized in fee) are now, as they were under the old law, entitled to vote, whether the qualifying property is in their own occupation or not.

2. **FREEHOLDERS FOR LIFE.**—The ancient statute made no distinction between freeholders of inheritance, and freeholders for life. It considered all who held freehold property for life to be freeholders; and under the general name, were comprehended persons holding what were called freehold leases,—leases for their own lives, or for the lives of any other person or persons. These were entitled to vote if the beneficial interest in their leases, above the reserved rent, was of the value of forty shillings. It also comprehended clergymen in respect of the benefices which they hold for life. These ancient franchises were continued by the Reform Act, which reserved the rights of every person, who was at the time of the passing of the act, seized for his own life or for the life of another, or for any lives whatever, of any freehold lands or tenements, in respect of which he then had, or but for the passing of the act, might acquire, the right of voting, so long as he should be so seized and be duly registered. But subject to that reservation of existing rights, the right to vote of a freeholder for life—whether for his own life, or the life of another,—depends upon his possessing ONE of the following qualifications—that he is in the actual occupation of the property,—or that it has come to him by marriage, marriage-settlement, devise, or promotion to any benefice or any office,—or that it is of the clear yearly value of not less than £10 above all rents and charges. Thus, in the two first cases, he may vote in respect of freehold property held for life of the value of forty shillings, as an old freeholder.

3. **COPYHOLDERS**, or owners in law or equity of any other land than freehold, held for any life or lives whatever, or any other larger estate, of the yearly value of not less than £10, over and above all rents and charges.

4. **LEASEHOLDERS**, either as lessee or assignee of lands

of any tenure for the unexpired residue of a term originally not less than sixty years, (whether determinable on lives, or not,) if of the clear yearly value of £10;—of a term originally not less than twenty years, of the clear yearly value of not less than £50. But sub-lessees, or assignees of an under-lease must be in the actual occupation of the premises.

5. OCCUPIERS of lands or tenements as tenants, at a clear yearly rent of not less than £50. By a later act¹ the lands and tenements need not be the same, but different lands and tenements, rented and occupied in succession, during the twelve months previous to the last day of July; and lands and tenements, occupied by joint occupiers, shall give a vote to each, in case the rent when divided by the number of occupiers, shall give a rent of not less than £50 to each.

The same act has explained a provision of the Reform Act, that no trustee or mortgagee of property should vote, unless in actual possession or receipt of the rents and profits of the estate, by declaring that the mortgagor in actual possession or in receipt of the rents and profits shall vote, notwithstanding the mortgage; and that the cestui que trust in actual possession, or in receipt of the rents and profits, though he may receive them through the hands of the trustee, shall vote for the same, notwithstanding the trust.

The right of voting for counties is further restricted by enactments in the Reform Act, that freeholds within cities and boroughs in the occupation of the freeholder himself, shall not confer a vote for the county, if of such value as to confer a right to vote for the city or borough; and with respect to copyhold and leasehold property within cities and boroughs, such property confers no right of voting for the county, if of such value as to confer a right on the owner, or any other person, to vote for such city or borough, whether the right shall have been acquired or not.

There is a further general restriction that freeholders, copyholders, customary tenants, or tenants in ancient de-

¹ 6 Vict., cap. 18.

mesne (that is, all holders of property not leasehold) cannot be registered as voters, unless they have been in actual possession, or in receipt of the rents and profits of their qualifying property, for six calendar months at least, next previous to the last day of July in the year in which they claim to be registered. Nor can a lessee or assignee, nor occupier and tenant, be registered unless he has been in actual possession or receipt of rents and profits for twelve calendar months previous to the last day of July in such year. But possession or enjoyment of rents and profits for these respective periods, is not required in cases where the qualifying property has come within the year to the person claiming to be registered as a voter, by descent, succession, marriage, marriage-settlement, devise, promotion to a benefice in the church, or to an office.

Borough Voters.

1. OCCUPIERS OF HOUSES.—The right of voting for cities and boroughs is conferred on every male person of full age, and not under any legal incapacity, who occupies within the borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building (either separately or jointly with land within the borough, occupied therewith by him as owner, or as tenant under the same landlord), of the clear yearly value of not less than £10. Premises jointly occupied by more persons than one as owners or tenants, confer the right of voting on each of such joint occupiers, if the clear value thereof, when divided by the number of occupiers, gives a sum of not less than £10 for each occupier.

This right is restricted by enactments that no person shall be registered in any year as a voter unless he has occupied the premises for twelve calendar months next previous to the last day of July in such year,—nor unless he has been rated during that time in respect of the premises to all rates for relief of the poor,—nor unless he has paid, on or before the 20th of July in that year, all the poor's rates and as-

sessed taxes which have become payable from him in respect of the premises, previously to the 5th day of January in the same year,¹—nor unless he have resided for six calendar months next previous to the last day of July, within the borough, or within seven statute miles thereof, or any part thereof,—such distance by a later act² to be measured in a straight line on the horizontal plane from the point within any city or borough from which such distance is to be measured according to the direction of the Reform Act. The premises may, however, be different premises, occupied in immediate succession during the twelve calendar months next previous to the last day of July.

2. **FREEHOLDERS IN COUNTY BOROUGHES.**—In cities and towns which are counties of themselves, the freeholders have the same rights of voting as county freeholders if duly registered; but no freeholder or burgage tenant can be registered unless in actual possession or receipt of the rents and profits for his own use for twelve calendar months previous to the last day of July (except the property came to him by descent, succession, marriage, marriage-settlement, devise, or promotion to any benefice in a church, or to any office), nor unless he has resided for six calendar months next previous to the last day of July, within such city or town, or within seven statute miles thereof, or any part thereof, measured as before mentioned.

3. **BURGESSES OR FREEMEN** of any city or borough returning a member, and in the city of London freemen and liverymen, are entitled to vote if duly registered. But no person can be registered in any year unless, on the last day

¹ This date was altered from the 20th of July by the act 11 & 12 Vict., cap. 90, which enacted that after the 1st of January, 1849, no person should be required, in order to entitle him to have his name inserted in the list of voters for any city, town, or borough in England, to have paid his poor's rates or assessed taxes, except such as became payable previously to the 5th of January in the same year;—but no person should be put in the list unless those rates and taxes were paid on or before the 20th of July following.

² 6 Vict., cap. 18, s. 76.

of July in such year, he be qualified in such manner as would entitle him then to vote if such were the day of election, and the Reform Act had not passed,—nor unless he had resided for six calendar months next previous to the last day of July, within his city or borough, or within seven statute miles of the place where the poll would have been taken if the Reform Act had not been passed,—nor unless (in the case of a borough sharing with another place the right of election) within seven statute miles of such place. But a burgess or freeman, elected or admitted after the 31st of March, 1831, otherwise than in respect of birth or servitude, does not acquire a right to be registered as a voter. Nor does any person become entitled, as a burgess or freeman, in respect of birth, unless his right be originally derived through some person admitted or entitled to be admitted before the 31st of March, 1831, or through some person who since that time has become, or who shall afterwards become, a burgess or freeman in respect of servitude.

No person shall be registered as a voter for any city or borough, who within twelve calendar months next previous to the last day of July in each year, shall have received parochial relief, or other alms which by law disqualify him from voting at elections.

But these rights cannot be exercised unless the person qualified to vote—whether in counties or boroughs—be duly registered on the REGISTER which the Reform Act requires to be annually made out by the overseers of every parish, and of every city and borough, up to the last day of July in each year. The Reform Act introduced a new system of investigating and determining the right of the voter prior to the time of taking the poll; and by removing the inconvenience and delay which prevailed in the old mode of conducting elections,—when the voter's right was determined at the poll,—the time occupied by contested elections was much shortened—that of a county election from fifteen days (the former limit) to two days,—and, by a later act, to one day. This was effected by the system of making and settling re-

gisters of voters before the election, and rendering these conclusive of the rights of all persons whose names appeared in the register to vote at the election.

The system of registration was revised a few years after the Reform Act, and re-enacted ;¹ and it is under the authority of the later act that the registration is now conducted. County registrations are commenced by the clerk of the peace, who is required annually, before the 10th of June, to send his precept to the overseers of the poor of the several parishes within his county, to prepare their lists, for which purpose the clerk of the peace must furnish them with printed forms, and a copy of the register then in force, applicable to each parish, and written instructions how to proceed. The overseers, before the 20th of June, must publish a notice requiring all persons entitled to vote, not being on the existing register, or whose qualifications are changed, or who intend to make a new claim, to give or send to the overseers, before the 20th of July, notice in writing, of their claim, signed by the claimant. The overseers, before the last day of July, are required to make an alphabetical list of the persons who have so claimed, containing the names, places of abode, and qualifications of the claimants, the description of the property, and the name of the occupying tenant. They are empowered, if they have reasonable cause to believe any one on the list not to be entitled to have his name there, to add the word 'Objected' in the margin of the list, opposite the name; and the word 'Dead' against the names of those whom they believe to be dead. Before the 1st of August the overseers must sign, and print and publish the lists.

Any person upon the register may object to any person upon the list, as not having been entitled on the last day of July preceding, by giving, before the 25th August, notice, signed by the party objecting, to the overseers, and to the person objected to, and to the occupying tenant, if the place of abode of the party objected to, be not within the parish.

¹ By 6 Vict., cap. 18.

On or before the 29th August, the overseers must return to the clerk of the peace the copy of the register, and with it the list of claimants, with the marginal additions; and a copy of the list of persons objected to.

A similar list must be annually made in cities and boroughs, where the overseers are set in motion by the town-clerks, and are required to follow the same system as that prescribed for county registration, and within the same dates; but in the notice calling on claimants to register, they are required to add, that no person can be inserted in the list, unless he pay, on or before the 20th day of July ensuing, all the poor's rates and assessed taxes which became payable before the 5th day of January preceding. The town-clerks are required to prepare and publish lists of the freemen entitled to vote; and objections may be made to the respective lists by notices to the overseers or town-clerks, as in the case of the counties. In the city of London, the secondaries of the City issue precepts to the clerks of the livery-companies, requiring them to make the lists, and to transmit them to the secondaries to be fixed in the Guildhall and Royal Exchange.

The decision of the claims, and the final revision and settlement of the lists, are confided to barristers, appointed by the senior judges on their circuits. The revising barrister for each county, makes a circuit through the county, and holds open courts, for the revision of the county and borough lists, at convenient times, between the 15th September inclusive, and the last day of October inclusive—of which public notice is given. The courts are attended by the clerk of the peace, and overseers, and by the town-clerk of the boroughs, and, in London, by the secondaries. The revising barrister is empowered, after consideration of the claims, to insert the names of persons omitted from the lists, to correct mistakes proved before him, to expunge the names of persons whose qualifications are insufficient in law, and the names of persons proved to him to be dead; and in cases where the nature or description of the qualifi-

cation is, in his judgment, insufficient for identity, he may expunge such names, unless the defective matters be supplied before he has completed the revision of the list. Parties who have given notice to the revising barrister of their intention to oppose a claim, are admitted to oppose it by evidence or otherwise; and when the notices of objection have been proved to have been given, the barrister must require it to be proved that the person objected to, was entitled on the last day of July preceding to have his name inserted in the list of voters, in respect of the qualification described in the list, or his name shall be expunged from the list. When the revisions are completed, the county lists are to be sent to the clerk of the peace, and those of the boroughs to the town-clerks. An appeal is allowed from the court of the revising barrister to the court of common pleas, whose judgments, which are final, must be notified to the sheriff or returning officer, having the custody of the lists, so that the necessary alterations or corrections may be made.

The register being thus completed by proceedings anterior to the election, the voter has nothing more to do when an election is announced, than to attend in person at the hustings, or polling-place appointed for his locality, and there vote, orally and publicly, for the candidate whom he prefers. The register is conclusive evidence that the qualifications annexed to the names continue in force; provided in the case of boroughs the voter has, ever since the 31st July in the year in which his name was registered, continued—and that at the time of the voting he continues—to reside within the limits of the borough. No inquiry can be made at the time of polling, as to the right of any person to vote; except that the returning officer must, if required on behalf of any candidate, put to the voter the questions,—“Are you the same person whose name appears on the register as A. B., and have you already voted, here or elsewhere, for this county or borough, at this election?” These questions the voter is required to answer; and, if required on behalf of

a candidate, to make oath, or affirm, to the truth of his answers.

The advantage of the new system introduced by the Reform Act, cannot be appreciated, without an acquaintance with the old practice, where the inquiry into the qualification of the voter was reserved for the hustings, at the time when he tendered his vote. He was then liable to be examined by the opposing agent upon his qualification, and upon any grounds which might invalidate his vote; and these examinations, when delay was necessary for the interests of the candidate, were frequently carried to an extreme length. But even there the questioning of the voter's right did not always terminate; for in case of doubt, the poll-clerk appointed by the returning officer to take the votes, had the power of sending the case to be argued before the court of the high sheriff, or county court, which sat throughout the election, presided over by a barrister as the sheriff's assessor; and where each candidate was represented by a barrister and solicitor. The ancient practice required the polling for the whole county to take place, in one and the same locality; but now power has been given to the sheriff, or returning officer, to erect polling-places in various parts of the county, city, or borough, for taking the votes; and no person is permitted to vote but at the polling-place allotted to his neighbourhood.

The Reform Act was accompanied by another act,¹ passed in the same session, to settle and describe the divisions of counties, and the electoral limits of cities and boroughs. The divisions of the counties are described in a schedule to the act, and are called by the names of the hundred or principal places in each division; and the electoral boundaries of each city and borough are defined in another schedule with great minuteness. By these divisions and the general effect of the Reform Act the county members of England and Wales were increased from 95 to 159; the number of members for London, by the division of the Metropolis into new

¹ 2 & 3 Wm. IV., cap. 64.

boroughs, was increased to 18 ; 56 boroughs were disfranchised, or put into the well-known schedule A, and 31 had their number of members reduced to one ; 43 new boroughs were created, of which 22 returned two members, and 21 one member each.

SCOTLAND.

Scotland also had its reform act,¹ by which its representatives were increased from 45 to 53, its county members being fixed at 30, and its burgh or town members at 23. The rights of existing freeholders were reserved during their lives, or their enjoyment of the same property : subject to that reservation, no person should acquire the right of voting except by one or other of the qualifications described in the following analysis of the act.

County Voters.

OWNERS.—Every owner of lands, houses, feu-duties, or other heritable subjects, of the clear yearly value of £10, after deduction of feu-duty, etc.,² if, by himself or his tenants, in possession of such subjects, and himself in actual occupation, or in receipt of the rents and profits thereof. But he must have been the owner for six months prior to the 31st July, unless the property came to him by inheritance, marriage, or death, or by appointment to an office.

LIFE-RENTERS—where two or more persons interested as life-renter and as fiar. Each joint-owner having a share of the value of £10. Husbands in respect of property of their wives, or as tenants by the courtesy of Scotland after the death of their wives.

TENANTS—under leases of not less than 57 years, or for the life of the tenant, if tenant's interest not less than £10 yearly value.

¹ 2 & 3 Wm. IV., cap. 65. The preamble of the Scotch Reform Act states it to be expedient that the right of election should be extended to persons of property and *intelligence*. There is no similar statement in the English Act.

² The forty-shilling freeholder does not exist in Scotland.

For not less than 19 years, if yearly value of tenant's interest not less than £50.

In personal occupancy, if yearly rent not less than £50.

If not less than £300 has been paid as price or grassum for the tenant's interest, whatever the rent.

But they must have been tenants for twelve months prior to 31st July in any year, unless the property came by inheritance, etc.

Burghs and Towns.

PROPRIETORS, TENANTS, and LIFE-RENTERS for 12 months previous to 31st July, in the occupation of a house, warehouse, counting-house, shop, or building within the city, burgh, or town, and resident within seven miles thereof, of the yearly value of £10. The right of voting formerly vested in town-councils ceased.

The true owners, if resident, of the like premises, of the like value, are entitled to vote, although they do not occupy any premises within the limits of the burgh; and the husbands of such owners in the lifetime of their wives, or after their death, if tenants by the courtesy of Scotland.

The power of voting depends upon registration. The list, in the case of counties, is made out by the parish schoolmaster, who makes his returns of claims and objections, to the sheriff-clerk of the county. The sheriff holds courts for revising the lists, and from whose decision there is an appeal to "the sheriffs liable in attendance at the circuit courts of justiciary." The lists for burghs are made out by the assessors of every burgh, who return them to the town-clerks, and they are revised by the sheriff of the county.¹

The eldest sons of Scotch peers were declared entitled to be registered and to vote; and also to serve as members for any county or borough in Scotland. No member for any county in Scotland shall be required to be qualified as an elector within the county.²

¹ 19 & 20 Vict., cap. 58, by which the registration for burghs is now lated.

² See *ante*, p. 466.

IRELAND.

The Act of Union, in 1801, provided that the qualifications of voters in Ireland, in respect of property, should be the same as in England; but the forty-shilling freeholders, as electors of counties, were disfranchised in 1829, and the qualification of freeholders was raised to £10.¹ The Irish Reform Act² gave votes to persons possessing certain new qualifications, in addition to the persons then by law qualified to vote; and it declared that all laws, statutes, and usages then in force respecting elections of members for any county, city, town, or borough in Ireland should, save as they were repealed or altered by the Reform Act, remain; and they were thereby re-enacted and declared to be in full force. The existing voters were

FREEHOLDERS (including leaseholders for their own lives, or the life or lives of any other person) having property of the clear yearly value of £10, or of £20 of the late currency of Ireland.

To these were added by the Reform Act,

COPYHOLDERS for life, or for the life of another, or for any lives, or larger estate, of the yearly value of £10, above all rents and charges.

LESSEES OR ASSIGNEES for any term, originally not less than *sixty* years, with a beneficial interest of £10 per annum, above all charges.

LESSEES OR ASSIGNEES for any term, originally not less than *fourteen* years, with a beneficial interest of not less than £20 per annum.

LESSEES OR ASSIGNEES for any term originally not less than *twenty* years, with a beneficial interest not less than £10 per annum.

The last class of lessees or assignees of a term of 20 years, could not—nor could a person being only sub-lessee, or assignee, of an underlease, in respect of a term of 60 years, of 14

¹ 10 Geo. IV., cap. 8. This was done in connection with the Roman Catholic Relief Act.

² 2 & 3 Wm. IV., cap. 88.

years, or 20 years—vote unless in the actual occupation of the premises.

An act passed in 1850¹ made changes in the qualifications, by giving the elective franchises to the following persons.

OCCUPIERS, as tenants or owners, of lands or tenements, rated under the Irish Poor Relief Act, as occupiers, at the annual value of £12, or upwards, if duly registered as being occupied for twelve calendar months.

OWNERS, legal or equitable, in fee-simple, fee-tail, or for their own lives (the latter not in respect of leaseholds) or having an estate of freehold for lives renewable for ever—or an estate *quasi* in tail of such freehold, of lands rated to the relief of the poor, at the net annual value of £5 or upwards, and which shall be to the owner of the net annual value of £5, above all taxes, cesses, or rates, payable out of the same.

By the operation of this act no person can vote in respect of any qualification which requires the voter to have been the *occupier*, except under the provisions of this act. And no person can vote for a county in respect of tenements within a parliamentary city or borough, in respect of which he would or might be entitled to vote for such city or borough.

Counties of Cities and Counties of Towns.

The Reform Act gave the elective franchise to the following persons, in addition to those qualified before the Reform Act.

FREEHOLDERS of lands or tenements within the city or town, in actual occupation, with a beneficial interest of the clear yearly value of £10.

LESSEES or ASSIGNEES for such terms, of such value, and subject to such provisions as would, if within a county, give a vote for the county.

¹ 13 & 14 Vict., cap. 69: "An act to amend the laws which regulate the qualification and registration of parliamentary voters in Ireland," etc.

OCCUPIERS, after six months' occupation, of any house, warehouse, counting-house, or shop, of the clear yearly value of not less than £10.

The rights of forty-shilling freeholders then being, were saved, so long as they continued owners of the same tenements.

Cities and Boroughs.

OCCUPIERS—after six months' occupation—of any house, warehouse, counting-house, or shop, of the clear yearly value of £10.

FREEMEN—freeholders, and persons who by reason of any corporate law or other right, were, at the time of the Reform Act, by law entitled to vote,—and all who by birth, marriage, or service, or by virtue of any statute then in force should thereafter be admitted to their freedom, if duly registered, and so long as they reside within seven statute miles of the borough;—and not being honorary freemen admitted after 30th March, 1831.

The act of 1850 altered the Reform Act as to occupiers in cities and boroughs, by reducing the qualification from £10 to £8 as follows:—

OCCUPIERS, as tenant or owner, rated under the last act for the relief of the poor, as occupier at a net annual value of £8, or upwards, if duly registered as having occupied for twelve months.

All other qualifications by occupation in boroughs should cease, save and except forty-shilling freeholders, or £5 inhabitant householders, who might be qualified under the Reform Act.

This act repealed all previous enactments as to registration in Ireland, and substituted a revised system.¹

The Reform Acts were followed by others to improve its working system; and it is no inconsiderable part of its success that it has enabled contested elections, as well in counties as in cities and boroughs, (with some exceptions,) to be carried through in one day. This was effected by dividing the counties and boroughs into polling-districts, each pro-

¹ 13 & 14 Vict., cap. 69, s. 55.

vided with polling-booths so arranged that not more than a limited number of voters should poll at each booth, in England not more than 300,—in Ireland not more than 100,—and in the former not more than 100, if a candidate should require that arrangement and pay the expenses. In England and Wales, at city and borough elections, the poll commences at 8 A.M., and continues till 4 P.M.;¹ in county elections, it commences at 8 A.M., and is kept open until 5 P.M.²

In Scotland, at elections for cities or burghs, the sheriff must within two days after the receipt of the writ announce the day for the election, which must be not less than four nor more than ten days after the day on which the writ was received (except with regard to certain districts of burghs, as to which the old law remains, as not less than ten nor more than sixteen days), the poll to be kept open for one day only between the hours of 8 and 4.³ In counties the poll is limited to one day, between the same hours, except in the counties of Orkney and Shetland, where the poll may be kept open for two consecutive days.⁴

In Ireland the same law was applied to cities and boroughs, by a statute passed in 1847, which reduced the time of polling from five days to one.⁵ A later statute shortened the time for taking the poll at contested elections for counties, as well as for cities and boroughs, which it divided into polling-districts with a separate polling-place to each. It enacted that in counties the polling shall commence on the day next but two after the day fixed for the election (the nomination-day), and shall continue for two successive days only from 9 A.M. of the first, and 8 A.M. of the second day, until 4 in the afternoon. At elections for cities and boroughs the polling shall commence at 8 A.M., of the day next but one after the nomination-day, and be continued open until 5 P.M.⁶

These proceedings have been facilitated by enactments declaring that in England the oaths of allegiance, abjuration,

¹ 5 & 6 Wm. IV., cap. 36, 1835.

² 16 & 17 Vict., cap. 15, 1853.

³ 5 & 6 Wm. IV., cap. 78, 1835.

⁴ 16 & 17 Vict., cap. 28, 1853.

⁵ 10 & 11 Vict., c. 81, 1847.

⁶ 13 & 14 Vict., cap. 68.

and supremacy shall not be taken by any voter, nor any oath in lieu thereof;¹ and that no Roman Catholic in Ireland shall be required to take the Roman Catholic oath, previously to voting at elections, but shall be admitted to vote on the same conditions, and taking the same oaths, as are taken by Protestants in Ireland.² The first of these acts defined the duty of the returning officer in case of riot or open violence, whether on the day of nomination of candidates, or on the day of polling. He shall not terminate the business, but shall adjourn until the following day; and, if necessary, until the interruption or disturbance shall have ceased; Sunday, Good-Friday, or Christmas-day, intervening, to be passed over.

It was formerly a matter of great constitutional jealousy if soldiers were allowed to remain in the vicinity of elections, whilst they were going on. An old law³ required that soldiers billeted or quartered in a city or borough, should be removed to the distance of at least two miles; but when the polling was reduced to one day, the removal of soldiers was discontinued; and now, no soldier within two miles of the place of election, is permitted to go out of his barracks or quarters, unless to mount or relieve guard, or to give his vote; and he is to return with all convenient speed. It is the duty of the clerk of the crown in chancery, or of the officer making out the writs for the elections, with all convenient speed, to give notice to the secretary-at-war, who must give notice to the general commanding the district, who must give orders for enforcing compliance with the law.⁴

The constitution requires that all elections, of whatever nature, shall be made with the utmost freedom. This was declared as early as in the Statute of Westminster 1. "And because elections ought to be free, the king commandeth, upon great forfeiture, that no man, by force of arms, nor by malice, or menacing, shall disturb any to make free elections."⁵ The Declaration of Rights also provided "that elec-

¹ 5 & 6 Wm. IV., cap. 36, s. 6.

² 6 & 7 Vict., cap. 28.

³ 8 Geo. 2, cap. 20.

⁴ 10 & 11 Vict., cap. 21.

⁵ 3 Edw. I., cap. 5, anno 1275.

tion of members of parliament ought to be free.”¹ To prevent the influence of the crown, statutes passed soon after the Revolution, enacted that officers engaged in managing and collecting the revenue, who should by word, message, or writing, or in any other manner, endeavour to persuade an elector to give, or to dissuade any elector from giving his vote for the choice of any person as a member of parliament, should forfeit £100, to be recovered by any informer, and be disabled from holding any office of trust under the crown.² The house of commons, by a resolution against the interference of peers in elections, declares—“That it is a high infringement of the liberties and privileges of the commons of the United Kingdom, for any lord of parliament, or other peer or prelate, to concern himself in the election of members to serve for the commons in parliament; or for any lord-lieutenant or governor of any county, to avail himself of any authority derived from his commission, to influence the election of any member.”³ Protection has been still further extended to the voters, by a recent statute, in analogy to the old Statute of Westminster 1, which has made it a misdemeanour, punishable with fine or imprisonment,—besides the forfeiture of £50, recoverable by any person who shall sue for the same,—for any person, “directly or indirectly to make use of, or threaten to make use of any force, violence, or restraint,—or to inflict, or threaten the infliction of any injury, damage, harm, or loss,—or in any manner to practise intimidation upon or against any person,—in order to induce or compel such person to vote or refrain from voting,—or on account of such person having voted or refrained from voting at any election.”⁴

¹ *Ante*, p. 431.

² 5 & 6 Wm. and Mary, cap. 20 and 48. 12 & 13 Wm. and Mary, cap. 10. 10 Anne, cap. 19.

³ May's Parliamentary Practice, p. 464. An Irish peer, elected and not having declined to serve for any county, city, or borough, in Great Britain, is expressly exempted from the operation of the resolution.

⁴ 17 & 18 Vict., cap. 102, s. 5.

CHAPTER VI.

THE PEOPLE.

PETITIONS AND PUBLIC MEETINGS.

Right to Petition.—Necessary to Representative System.—Importance of the Right.—Parliamentary Regulations.—Public Meetings.—Riot Act.

THE right and practice of petitioning the king, in his council or his parliament, have been before shown to have existed at a very early period. The statute of Charles II.,¹ upon the ground of preventing "tumultuous and disorderly soliciting of hands to petitions," imposed restrictions upon the exercise of the right, by enacting that no person should procure the hands, or consent, of above twenty persons to any petition to the king, or both or either houses of parliament, for alteration of matters established by law in church or state, unless the matter thereof had been first consented to and ordered by three justices of the county, or by the major part of the grand jury at the assizes or quarter sessions; or, if arising in London, by the lord mayor, aldermen, and commons in common council assembled; nor should any such petition be presented to the king or houses of parliament, accompanied with excessive number of people, nor at any one time above the number of ten persons." The Bill of Rights confirmed the general right of petitioning, by declaring "that it is the right of the subject to petition the king; and all commitments and prosecutions for such petitioning are illegal."²

It has been decided in the courts that the Bill of Rights

¹ 13 Car. II., cap. 5, *ante*, p. 381.

² *Ante*, p. 431.

did not repeal the statute of Charles II.;¹ but the statute places little restraint on the exercise of the right of petitioning as it now practically exists. It would not be difficult to comply with the requisitions of the statute, if it were desired to present a petition "signed and accompanied by excessive number of people;" but in modern times there is no occasion for such display. It is not now usual to petition the king for alteration of matters in church or state: since the legislative power has become wholly vested in the parliament, and the king's ministers are always members of one or other of the houses, petitions to the king, individually, have been gradually disused;—when the people communicate with their sovereign directly, it is usually on occasions which call for congratulatory addresses. The houses of parliament have acted in accordance with the statute;—their standing orders provide that petitions addressed to either house of parliament must (except in a few instances, of which petitions of the City of London are the chief) be presented by a member of the house.

The right of petitioning is a necessary adjunct of the representative system. It is the mode, and the only mode, by which the people communicate with the parliament; and more especially with their own house of representatives, to inform them of their views and opinions on subjects under the consideration of parliament; or by which they suggest any measure that they consider necessary or advantageous to the public good. The right is not confined to electors. As the members of the house of commons are representatives of the whole body of the people, although elected by a part only, so the right of petitioning belongs equally to all; and may be exercised by any individual, whether an elector or not; and either alone or in conjunction with others.

The exercise of the right is of great importance; for the number of petitions and of petitioners, and also the absence of petitions, in favour of, or against any measure before parliament, are considered to indicate the feelings and opinions

¹ *Rex v. Lord George Gordon*, Douglas Reports, p. 571.

of the people concerning it; and are taken into consideration, as an argument of weight, in both houses. To facilitate reference to this index of the people's opinions, the house of commons appoints "a committee on public petitions," under whose directions the petitions are classified and analyzed. This analysis gives the name of each petition, the number of the signatures, and its general object. Reports of the committee are printed three times a week, giving these particulars, and also summing up the total numbers of petitions and signatures in favour of, or against each public measure; and when a petition appears from its importance, or its peculiar arguments and facts, to require special notice, it is printed at length, in an appendix to the Report.¹ By these means not only are the two houses enabled to estimate the number and importance of the petitions, and to deduce from them the people's wishes; but the people themselves may obtain the views and opinions of each other by reading the reports, which are procurable at the cheapest rate of purchase.

The standing orders enforce on the members entrusted with petitions, the duty of reading, before they present them, in order to assure themselves that no flagrant violation of the standing orders regulating petitions, is apparent on the face of them. In the house of lords a peer may comment on the petition he presents, and upon the general matters to which it refers; and if this should lead to a debate, there is no rule of the house to limit its duration. But in the house of commons, to whom, as representatives of the people, petitions are far more numerous addressed than to the lords, and where economy of time is of great importance, no debate, nor even introductory speech is allowed, unless the petition refer to some matter of immediate importance. But, if required, it may be read by the clerk at the table. This economy of time is compensated by the publications of the committee on public petitions, to which there is no similar publication in the house of lords.²

¹ May's Parliamentary Practice, p. 410.

² *Ibid.*, p. 408.

Petitions to the legislature now generally proceed from PUBLIC MEETINGS, county, city, town, parochial, or any other district,—convoked by the sheriff, mayor, or other official, on the written requisition of some of the freeholders, burgesses, electors, or inhabitants; but no such concurrence of the official authorities is necessary,—a meeting may assemble by the spontaneous act of any portion of the people.¹ The constitutional right is undoubted; all that the law requires is that the meeting assemble peaceably, for the purpose of exercising the constitutional right, and that it be conducted without any violence, leading to a breach of the peace. In the event of a meeting, legal in its inception and declared purpose, becoming tumultuous and riotous, it would then be illegal, and liable to be dispersed by the magistrates under the authority of the Riot Act.

That act was passed in the reign of George I.² It provides that if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by a justice of the peace, sheriff, mayor, or other officer, by proclamation in the king's name, to disperse, shall unlawfully, riotously, and tumultuously remain or continue together for one hour, such continuing together shall be adjudged felony, and the offender shall suffer death.

The magistrate is directed, among the rioters, or as near to them as he can safely come, with a loud voice to command,—or cause to be commanded—silence, and then to make, or cause to be made, the proclamation following:—

“ Our sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse them-

¹ Public meetings for political purposes, it is said, cannot be traced to a higher origin than the year 1769. (Hallam's Constitutional History, vol. ii. p. 420.)

² 1 Geo. I., stat. ii. cap. 5. An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters.

selves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act, made in the first year of King George, for preventing tumults and riotous assemblies.—God save the King!”

Persons who do not disperse within the hour, may be seized and apprehended by any magistrate or peace officer, or by any private person commanded by them to assist; and must be carried before the magistrates of the county or place, to be proceeded against according to law. If any of the rioters happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending of them, by reason of their resistance, the magistrates and all other persons acting in enforcing the law shall be free, discharged, and indemnified against all persons.

The great severity of this law is to some extent mitigated by the warning it requires to be given, and the time it allows for dispersion. It also protects the people from sudden attacks by the military, who usually in such cases act under the direction of the magistracy, and do not use their arms until the Riot Act has been read, and the hour has expired. But if actual outrage has commenced, and the mob collectively, or a part of it, or any individual, within and before the expiration of the hour, attempts or begins to perpetrate an outrage amounting to a felony, it is the duty of the magistrates and all present, to endeavour, by the most effectual means, to stop the mischief, and to apprehend the offender.¹

¹ State Trials, 493.

CHAPTER VII.

THE PEOPLE.

LIBERTY OF THE PRESS.

Importance of Liberty of the Press.—A Modern Right.—Not in the Declaration of Rights.—Nature of Freedom of the Press.—Contest before its Establishment.—It lay in the Courts of Law.—Libel Act.—Truth of a Libel.—Libel Act of 1843.—Newspapers.—Printers.

THE Liberty of the Press is analogous in its object and tendency to the right of petitioning ; as the one is the direct, so the other is the indirect mode which the people possess, of bringing their views and opinions of public affairs under the notice of the king's government, of the parliament, and of each other. The value of this liberty, as an instrument of publicity, needs no explanation. Long experience has made Englishmen aware of the advantage which results from the free discussion of national affairs, of the merits and tendency of laws in progress, of the measures or policy of the government ; whilst it is impossible to estimate how much misconduct or injustice is averted or restrained by the dread of public exposure ; or how much good conduct, emulation, and zeal are secured by the hope of public commendation and applause.

The liberty of free commentary on public affairs is one of modern times ; anything analogous to it was impracticable until printing was invented ; and long afterwards the crown suppressed it, by regulating the number of presses and printers, and prohibiting new publications, unless previously approved by licensers of its own appointment. Breaches of these laws were punished in the court of star-chamber ; and

when that court was abolished in 1641, the long parliament assumed the same powers, founding their ordinances for the licensing of books on the model of the decrees of that court.¹ After the Restoration the statute of Charles II.² was framed from the parliamentary ordinances; and, revived by a statute of James II., was in force at the Revolution. In the reign of Charles II. the twelve judges resolved that it was unlawful to write anything respecting government. "If you write on the subject of government, whether in terms of praise or censure, it is not material; for no man has a right to say anything of government."³

That principle must have prevailed at the Revolution, for we do not find amongst "the rights" then declared, the right or liberty of printing, or indeed the right of freedom of speech except in parliament. Out of the act of Charles II., a rigid system of restriction had arisen, and literature of all kinds was subject to the control of licensers appointed by the crown. The act renewed by James II. would have expired in 1693, but after a contest in parliament it was again continued in force for one year and to the end of the following session of parliament.⁴ An attempt was made to renew it in 1695; but the question being put in the house of commons, it was negatived without a division.⁵

The press became from that time free to be exercised without previous license, or censorship—but the liberty is enjoyed subject to responsibility and punishment for its abuse. "The liberty of the press (observes Blackstone) is indeed essential

¹ Milton wrote his celebrated discourse of 'Areopagitica' to induce the Long Parliament to judge over again that order which they had ordained to regulate printing—"that no book, pamphlet, or paper shall be henceforth printed, unless the same be first approved and licensed by such as shall be thereto appointed." (Areopagitica.)

² See *ante*, p. 389.

³ Carr's Case, Howell's State Trials, vol. vii. p. 1127.

⁴ By 4 & 5 Wm. and Mary, cap. 24, s. 14.

⁵ The reader is referred to Lord Macaulay's account of the events which led to the establishment of the liberty of the press in England. History, vol. iv. p. 348. See also p. 540.

to the nature of a free state; but this consists in laying no *previous* restraints upon publication, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. Thus the will of individuals is left free; the abuse only of that free will is the object of legal punishment.”¹

The liability to abuse furnished the ground on which the liberty of the press was long resisted. It was looked upon by the tories as inconsistent with the authority of government, and as subversive of all order in the state; and when they wielded the powers of government, they employed them in prosecutions of public writers opposed to their principles and administration. It became the battle-cry of the whigs, whose favourite toast was, “The liberty of the press: it is like the air we breathe; if we have it not, we die.” Pamphlets and lampoons were the first weapons of the contending parties. Newspapers did not exist at the Revolution, the ‘London Gazette’ being the only similar publication at that time. Newsletters first appeared, soon followed by newspapers published twice a week. One of these, the ‘Flying Post,’ had offended the government, and in 1697 a bill was brought into the house of commons to prohibit the publishing of news without a license; but on the question that it be read a second time the noes were two hundred to sixteen.² The first daily newspaper was published in the reign of Queen Anne; and the first newspaper that came under the censure of parliament was the ‘Weekly Journal, or Saturday Post.’ Paragraphs from one of its publications reflecting on George I. and his government were read before the house of commons, and resolved to be a false, malicious, scandalous, infamous, and traitorous libel; the printer and publisher were committed

¹ Blackstone’s Commentaries, vol. iv. p. 152.

² Macaulay’s History, vol. iv. p. 772, *et passim*.

to Newgate; and the house voted an address to the king expressing their abhorrence of the libel, and detestation of the author of it.¹

The contest concerning the liberty of the press lay in the courts of law, and the question upon which it depended was,—whether it belonged to the judge or to the jury to decide that the publication was libellous. The general rule of our jurisprudence is that the judge must decide questions of *law*,—the jury, questions of *fact*; and applying the rule to cases of libel, it was contended by the opponents of the liberty of the press, that in criminal prosecutions for libels, the jury had only to find the fact of publication of the libel, and the truth of the *inuendoes*, or the truth of the meaning and sense of the libel, as stated in the indictment; it being the privilege of the judge, alone, to determine whether that meaning and sense constituted a libel. If that rule could have been maintained, the liberty of the press would have been stifled, as the accused would have been wholly in the power of the judges, on the real question, whether the words complained of—which he would probably admit that he had printed and published—were libellous or not. The legality of the doctrine was long controverted in the courts, receiving the support of some eminent judges, and the opposition of others; but its effect was sometimes counteracted by juries, stimulated by the eloquence and patriotism of Erskine, disregarding the ruling of the judge, and defeating his attempts to control them, by finding a general verdict of not guilty.²

¹ Commons' Journals, 1721, vol. xix. p. 562.

² "A verdict may be either general—guilty, or not guilty; or special—setting forth all the circumstances of the case, and praying the judgment of the court, whether, for instance, on the facts stated, it be murder, manslaughter, or no crime at all. This is when they *doubt* the matter of law, and therefore *choose* to leave it to the determination of the court; though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict, if they think proper so to hazard a breach of their oaths; and if their verdict be notoriously wrong, they may be punished, and the verdict set aside by attain, at

But at length this important question was settled by "an act to remove doubts respecting the functions of juries, in cases of libel."¹ After stating that doubts had arisen whether on the trial of an indictment or information for a libel on the plea of not guilty, it be competent to the jury to give their verdict upon the whole matter in issue;—it was declared and enacted that the jury might give a general verdict of guilty or not guilty, upon the whole matter in issue; and should not be required or directed by the judge to find the defendant guilty, merely on the proof of the publication of the paper charged to be a libel, and of the sense ascribed to the same in the indictment or information.

"But on every such trial the judge should, according to his discretion, give his opinion or directions to the jury, and the jury might find a special verdict, as in other criminal cases.

"In case the jury find the defendant guilty, he may move in arrest of judgment, on such ground and in such manner as by law he might have done before the passing of the act."

This important law was carried through the house of commons by the leadership of Fox, seconded by Erskine; but its success in the house of lords, where it was vehemently opposed by Lord Chancellor Thurlow, supported by the opinion of all the judges, was chiefly due to the advocacy of Lord Camden, then greatly advanced in years, and whose speech in support of the act was his last effort in parliament.²

The celebrated dictum, "The greater the truth, the greater the libel," was founded on a principle that prevented a defendant on the trial of an indictment for a libel, to give in the suit of the king, but not at the suit of the prisoner. But the practice, heretofore in use, of fining, imprisoning, or otherwise punishing jurors, merely at the discretion of the court, for finding their verdict contrary to the direction of the judge, was arbitrary, unconstitutional, and illegal. Blackstone's Commentaries, vol. iv. p. 361. The writ of attaint and all proceedings against juries for verdicts were abolished by the statute 6 Geo. IV., cap. 50, s. 60.

¹ 32 Geo. III., cap. 60, A.D. 1792.

² See Lord Campbell's Lives of the Chancellors, vol. vii. p. 44.

evidence the truth of the libel, in bar to the prosecution or even in extenuation of his conduct. In a civil action, where the object is damages, the truth of the accusation might be pleaded in bar to the suit; but "in a criminal prosecution, the tendency which all libels have to create animosities, and to disturb the public peace, is the whole that the law considers;" and it may have been supposed that the revelation of a shameful truth was more likely to rouse the passion of revenge, than a fabrication which the accused felt conscious of being able to destroy by a legal inquiry. But even this ancient principle has been modified;—under certain conditions the accused may give in evidence the truth of the matters charged, as a defence to an indictment. This has been effected by an act of parliament, passed on the suggestion and through the influence of Lord Campbell, and which has the further merit of introducing retractation and apology, for defamation, or for inadvertent or inconsiderate libels, in mitigation of damages; and of providing for the punishment of the not uncommon offence of threatening the publication of libels, in order to extort money.

This important act, which comprises the law of libel as it exists at the present day, is called "An Act to amend the Law respecting Defamatory Words and Libel." "For the better protection of private character, and for more effectually securing the liberty of the press, and for better preventing abuses in exercising the said liberty, it is enacted as follows:—

"A defendant in an action for defamation may (after notice of his intention) give in evidence, in mitigation of damages, that he made or offered an apology before the commencement of the action; or as soon afterwards as he had an opportunity of doing so, in case the action was commenced before there was an opportunity of making or offering an apology.

"In an action for a libel contained in a newspaper, or periodical publication, the defendant may plead that the libel

was inserted without actual malice, and without gross negligence; and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel; or, when the newspaper or publication is published at intervals, exceeding one week—that he had offered to publish the apology in any newspaper or periodical publication to be selected by the plaintiff. The defendant may, also, pay into court a sum of money by way of amends for the injury sustained.

“To publish, or threaten to publish, a libel; or, directly or indirectly, to threaten to print or publish—or to propose to abstain from printing or publishing—or to offer to prevent the printing or publishing of any matter or thing touching any other person, with intent to extort money, security, or any valuable thing; or with intent to induce a person to confer or procure any appointment or office of profit or trust, is an offence punishable by imprisonment, with or without hard labour, for not exceeding three years.

“Maliciously to publish a defamatory libel, knowing it to be false, is punishable with imprisonment for not exceeding two years, and with such fine as the court shall award.

“Maliciously to publish a defamatory libel, is punishable with fine or imprisonment, or both, as the court may award; the imprisonment not to exceed one year.

“On the trial of an indictment or information for a defamatory libel, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the matters charged should be published; and to entitle the defendant to give evidence of their truth as a defence, the defendant must, in pleading, allege the truth of the matters charged, and that it was for the public benefit that they should be published. To that plea the prosecutor may reply generally, denying the whole thereof; and if, after such plea, the defendant be convicted, the court, in pronouncing sentence, may consider whether the defendant's guilt is aggravated or mitigated by the plea, and by the evidence given to prove or disprove it.

The truth of the matters charged can in no case be inquired into without such plea or justification ; but the defendant may plead also the plea of not guilty.

“ If upon the trial of an indictment or information for the publication of a libel, on the plea of not guilty, evidence be given which establishes a presumptive case of publication against the defendant, by the act of any other person by his authority, the defendant may prove that such publication was made without his authority, consent, or knowledge ; and that it did not arise from want of due care or caution on his part.”¹

The discovery of the parties responsible for libels in newspapers, was provided for by a statute passed in the reign of George III.,² which has been superseded by a modern statute of similar purpose, but of more efficiency. It provides that no person shall print or publish a newspaper until the printer and publisher shall have delivered a declaration signed by them, to the commissioners of stamps and taxes, containing the title of the newspaper, the house or houses where it is to be printed and published ; the name, addition, and place of abode of both printer and publisher, and of every proprietor, resident out of or within the kingdom ; and if more than two proprietors, the proportional amount of their shares ; a similar declaration, to be made when the shares are changed by the acts of the parties or by operation of law. A certified copy of the declaration, to be given by the commissioners on payment of one shilling, is in all matters, civil and criminal, evidence of itself against the makers of it. The names and residences of the printers and publishers must also appear at the end of every newspaper ; and two copies of each newspaper, signed by the printer and publisher, must within three days be delivered to the commissioners (who pay for them), under a penalty of £20 ; such papers to be produced, within two years afterwards, at

¹ 6 & 7 Vict., cap. 96 ; amended as to Ireland by 8 & 9 Vict., cap. 75.

² 38 Geo. III., cap. 78.

the expense of the party applying for them, as evidence in any court of justice.¹

General printers also are required to give notice to the clerk of the peace, to be transmitted to the secretary of state, of the place where their presses are used ; and further, upon the front of every paper printed on one side only, and upon the first and last leaves of every book, to print the printer's name, with a minute description of his place of abode.²

¹ 6 & 7 Wm. IV., cap. 76, A.D. 1836.

² 39 Geo. III., cap. 79.

CHAPTER VIII.

THE PEOPLE.

PERSONAL LIBERTY, HABEAS CORPUS, TRIAL BY JURY.

Personal Liberty.—Innocence Presumed.—No Man obliged to criminate himself.—Commitment.—Warrant.—Bail.—Grand Jury.—Criminal Information.—Trial by Jury.—Selection of Juries.—Challenging Juries.—Assistance of Counsel.—Habeas Corpus.

THE English constitution regards the personal liberty of the people as their normal and primary condition; to be interfered with only in conformity with the law, and through the instrumentality of the courts of justice. This constitutional principle is rooted in Magna Charta. "No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him but by lawful judgment of his peers, or by the law of the land." It has been confirmed and enforced by various statutes, and finally by the Petition of Right, which have before been reviewed.

Personal liberty is protected by a constitutional rule or principle,—that every man accused of crime against the law, is presumed to be innocent, until he is proved to be guilty. That principle operates to protect the accused throughout the whole course of criminal proceedings. In the outset it prevents the sudden incarceration of a man accused or suspected of crime, until examination into the grounds on which he is accused or suspected. The executive government possesses no power of arbitrary imprisonment, al-

though in extraordinary cases a warrant may be granted by the privy council or secretaries of state.¹ In all ordinary cases, whether of treason, felony, or misdemeanour, when it is desired to imprison an accused person previously to trial, or to hold him to bail, application must be made to a justice or justices of the peace, for his or their *warrant* to apprehend the person accused or suspected; which can only be granted after proof on oath that a felony or other crime has been committed; and that there are cause and probability for suspecting the party against whom the warrant is prayed, to be the perpetrator. The warrant, which should be under the hand and seal of the justice, must set forth the cause for which it is granted; and it gives no further power to the officer authorized to execute it, than to bring the accused before the justices, either the same by whom the warrant was granted, or others; detaining him, in the meantime, for safe custody. The warrant must name the party to be apprehended; *general* warrants to apprehend all persons suspected, without naming or describing any person, being illegal and void.

When brought before the justices, the accused is further protected by another constitutional principle,—that no man can be obliged to criminate himself. He cannot be questioned; nor is he usually allowed voluntarily to explain or deny the charge, without being cautioned that if he deprives himself of the shelter of the constitutional rule, his words may be used as admissions against him. It is only by the examination of witnesses *vivâ voce* before them, and in the presence of the accused, that the justices can discharge the duty which the law assigns to them—that of determining, not the guilt, but the degree of suspicion attaching to the accused, of being the perpetrator of the crime with which he is charged. If by the examination, which must be taken down in writing, the suspicion is removed, it is their duty to discharge the prisoner; if it be confirmed, so as to render judicial inquiry necessary, they must by

¹ Blackstone's Commentaries, vol. iv. ch. 21.

warrant under their hand and seal, stating the cause of commitment, commit the accused to prison to await his trial in one of the courts of criminal jurisdiction, before a jury. But this imprisonment is only for safe custody, and not for punishment; and must not be accompanied by more hardships and restraints than are necessary for safe custody.

Even after commitment to prison on suspicion of crime, the principle of personal liberty continues to operate; and if the charge does not involve a crime of the highest nature, the justices, or if they should refuse, the judges of the superior courts, are empowered to liberate the prisoner on his giving *bail*—in other words, entering into a recognizance or obligation to the crown, by himself and two sureties, each in a given sum of money, proportioned to the magnitude of the offence and the circumstances of the parties, for the appearance of the accused in the criminal court, at the proper time, to take his trial. It is one of the fundamental principles of the Bill of Rights—"that excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted."

But the accused has not yet received all the protection that the constitution affords him. The criminal courts are constituted by a judge or judges, and two juries, the grand jury, and the petit jury. The grand jury is selected for the assizes from the magistrates and principal land-owners of the county, and for the quarter-sessions from the lists of jury-men made up for the assizes. It must consist of not less than twelve, nor more than twenty-three persons, in order to ensure a concurring majority of at least twelve. The offence must now be defined in legal terms in a bill of indictment, on which must be indorsed the names of the witnesses by whose evidence the charge is to be supported. The depositions of the witnesses taken by the justices are transmitted to and are in the possession of the judge, and he is thus prepared, in his charge or address to the grand jury, previously to the commencement

of their duties, to call their attention to any points in the case requiring especial consideration. To the grand jury the law confides the duty of determining whether the evidence adduced against the accused, is of that force and probability, that it is necessary for the ends of justice to put the accused on his trial. With the bill of indictment before them, sworn to secrecy and the faithful discharge of their duties, and in the absence of the accused, the grand jury examine the witnesses, and, according to the result of the examination, return the bill to the court indorsed, "a true," or "no true bill." In the latter case the prisoner is immediately discharged; in the former case, he is put on his trial in open court, before a judge and twelve petit jury-men; where the judge determines whether the action for which the accused is prosecuted be by law a crime, and whether the witnesses and evidence adduced to prove it, be by law admissible; and where the jury are sworn, by a unanimous verdict, according to the evidence, to find the accused "guilty," or "not guilty." If found "guilty," the judge sentences the prisoner to the punishment awarded to the offence by the statute law; if not guilty, he is discharged.

No second trial for the same offence can, under any circumstances, take place; but should any difficult question of law arise in the course of the trial, and the jury find the accused guilty, the presiding judge may reserve such question for the consideration of the judges of the superior courts, and may respite the execution, or postpone the sentence; and in the meantime commit the accused to prison, or take bail for his appearance to receive judgment, at such time as the court shall direct. The questions of law are afterwards argued and decided; and according to the result the prisoner is sentenced, or discharged.¹

It is not, however, necessary, although now usual, to lay the accusation before a justice or magistrate, or to arrest the accused previously to indicting him before a grand jury.

¹ 11 & 12 Vict. cap. 78.

Such indictment may be the first step ; and if found a true bill, the accused may be arrested by a warrant from the chief or other justice of the court of king's bench, and committed to prison or held to bail, as the case requires, to await his trial.

The grand jury is one of the principal fences interposed by the constitution against the exercise of arbitrary power. The constitution has not, however, left the executive government wholly dependent on grand juries for the trial of political offences. It permits the crown, through its officer the attorney-general, *ex officio*, to exhibit an information in the name of the king, in the court of king's bench, charging the accused with the offence against the law ; upon which information the accused is brought to trial, without the intervention of a grand jury. "The objects of the king's own prosecutors" (observes Blackstone) "are properly such enormous misdemeanors as peculiarly tend to disturb or endanger his government, or to molest and affront him in the regular discharge of his royal functions. For offences so high and dangerous, in the punishment or prevention of which a moment's delay would be fatal, the law has given to the crown a power of immediate prosecution, without waiting for any previous application to any other tribunal ; which power, thus necessary not only to the ease and safety, but even to the very existence of the chief magistrate, was originally reserved in the great plan of the English constitution."—"But these informations are confined by the constitutional law to mere misdemeanours only ; for whenever any capital offence is charged, the same law requires that the accusation be warranted by the oath of twelve men, before the party shall be put to answer it."¹ So when the information has been filed, it must be tried by a petit jury of the county where the offence arises, precisely as an ordinary indictment.²

¹ Blackstone's Commentaries, vol. iv. ch. 23, p. 309.

² There is another species of informations which may be filed, by leave of the court, on the complaint or relation of a private subject, in cases

The efficacy and value of trial by jury, greatly depend upon the securing of a jury impartial and uninfluenced; but more especially in state prosecutions, involving the liberty and perhaps the life of the accused, does the pure administration of justice depend on obtaining a jury free from the influence or control of the crown. The ancient law left the selection of juries almost wholly in the discretion of the sheriffs, and as they were usually under the power or influence of the crown, it was not difficult for its law-officers to obtain juries subservient to its interests or desires, whenever it appeared as prosecutor. The Bill of Rights referred to this influence of the crown over the sheriffs by declaring that "juries ought to be duly empanelled and returned; and jurors which pass upon men in trials for high treason ought to be freeholders."¹ The persons qualified to be jurors, and the mode of their selection, were placed under uniform law by an act passed in 1825, under the influence of the late Sir Robert Peel.² It defines the class of persons between the ages of twenty-one and sixty, from which juries are to be selected in each county. Freeholders and copyholders having £10 a year in lands or rents;—leaseholders of £20 a year for unexpired terms of at least twenty-one years;—householders rated to the poor, or to the inhabited house duty, in Middlesex, at a value of not less than £30, in any other county not less than £20 a year, or who occupy a house containing not less than fifteen windows, are qualified to serve on juries for the trial of issues (petit juries) in the courts of Westminster, and in the counties where they reside, and on grand juries, as well as petit juries, at the session of gross and notorious misdemeanours, riots, batteries, libels, and other immoralities of an atrocious kind, which, on account of their magnitude or pernicious example, deserve the most public animadversion. These are filed by the master of the crown office, as the standing officer of the public. Blackstone's Comm., *idem*.

¹ 1 Wm. and Mary, cap. 20; see *ante*, p. 431.

² 6 Geo. IV., cap. 50: "An Act for consolidating and Amending the Laws relative to Jurors and Juries,"—not the least of the numerous benefits conferred on the country through the agency of that great statesman.

sions of the peace. Lists of these are annually made by the parish-officers, of each parish, and arranged by the clerk of the peace of each county in "the jurors' book," which is delivered to the sheriff; and from that book of the current year he must return the panels of jurors to the different courts.¹

The influence of the crown is diminished by the exclusion from the jurors' book, of persons over whom it would be likely to possess influence—whilst others are exempted from a regard to the nature of their professional or official duties. Peers, judges; all clergymen in Holy Orders, Roman Catholic priests, and Protestant dissenting ministers; serjeants and barristers-at-law, doctors and advocates of civil law; attorneys, solicitors, and proctors, actually practising; officers of the courts, coroners, gaolers, and keepers of houses of correction; physicians, surgeons, and apothecaries; officers in the army or navy on full pay; pilots; household servants of the king; officers of customs and excise; sheriffs' officers, high constables and parish-clerks—are absolutely freed and excepted, and shall not be inserted in the lists. Besides these are excluded, aliens; and any man attainted of treason or felony, or convicted of any crime that is infamous, unless he has obtained a free pardon; and any man who is under outlawry or excommunication.

An accused when put on his trial has the further protection of being allowed to *challenge* the jury,—to object to them, before they are sworn. He may challenge the whole panel, or, as it is called, the *array*, if any ground exist for imputing illegality in the selection; but without expressing any cause, a person arraigned for felony may make peremptory challenges,—that is, may object to individual jurors, as they appear, without assigning any reason or cause, and before they are sworn,—to the number of twenty.² This privilege of peremptory challenges is confined to the prisoner; for an an-

¹ The court may make an order, or motion, in any case, civil or criminal, excepting only indictments for treason or felony, for a special jury to be struck—the mode of doing which is described in the act.

² 6 Geo. IV., cap. 50, s. 30.

cient statute provided "that if they that sue for the king will challenge any of the jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court."¹

A special protection is afforded to those who are charged with and about to be tried for high treason. A statute of Queen Anne² assimilated the crimes and offences of high treason, and misprision of treason, in England and Scotland, declaring that no crimes or offences should be such in Scotland, but those in England; and it introduced into Scotland³ the trial by jury, according to the system and the law of England, for such offences. It enacted, also, that "when any person is indicted for high treason, or misprision of treason, a list of the witnesses, that shall be produced on the trial, for proving the indictment, and of the jury, mentioning the names, profession, and place of abode of the witnesses and jurors, be also given at the same time that the copy of the indictment is delivered to the party indicted; and that copies of all indictments, with such lists, shall be delivered to the party indicted, ten days before the trial, and in the presence of two or more credible witnesses."⁴ These enactments must be strictly complied with, and should

¹ Stat. 31 Edw. I., stat. 4.

² 7 Anne, cap. 21: "An Act for improving the Union of the Two Kingdoms."

³ This act declared that after the 1st July, 1709, no person accused of any capital offence, or other crime, in Scotland, shall suffer or be subject or liable to any torture.

⁴ Sir Robert Peel's act has varied the statute of Anne by enacting that when a person is indicted for high treason or misprision of treason, in any other court than the court of king's bench, the list of the petit jury shall be given, with the copy of the indictment, ten days before the *arraignment*;—if in any other court, a copy of the indictment shall be delivered at the time aforesaid; but the list of the jury may be delivered after the arraignment, so as the same be delivered ten days before the trial. But this does not extend to treason, or misprision of treason, in compassing and imagining the death of the king, when the overt act is assassination, or any direct attempt on his life, or his person,

the crown fail in proving compliance, the court would give the full benefit of the failure to the accused.¹

Prisoners on their trial were at all times allowed the assistance of counsel; but before 1836, persons on trial for felonies were not allowed, either themselves, or by their counsel, to address the jury in their defence. They might call witnesses, and cross-examine the witnesses for the prosecution, but there could be no speech; although in trials for misdemeanours—cases below felonies,—and in trials for high treason—cases above felonies,—speeches by the accused, or by his counsel, were permitted. This anomaly was put an end to in 1836, by a statute which provided that “all persons may, after the case for the prosecution, make full answer and defence thereto by counsel, or by attorney in courts where attorneys practise as counsel. Persons held to bail, or committed to prison, are entitled to copies of the examinations of the witnesses, on whose depositions they have been committed, on payment of not exceeding three halfpence for every ninety words; and at the time of the trial, they may inspect, without fee, all depositions taken against them, and returned into the court where the trial is had.”²

“Thus the founders of the English law” (observes Blackstone) “have with excellent forecast contrived that no man shall be called to answer for any crime unless upon the preparatory accusation of twelve or more of his fellow-subjects, the grand jury; and that the truth of every accusation should afterwards be confirmed by the unanimous suffrage of twelve whereby his life may be endangered, or his person suffer bodily harm; or for counterfeiting the great seal, or privy seal, or the king’s sign-manual or privy signet (s. 21.)

¹ See the trial of *Regina v. Frost*—where numerous points arose on this statute, and witnesses of the crown could not be examined, on account of the inaccuracy of their descriptions, the judge saying that “as the prisoner might possibly be misled to expend time by looking after the witness where he could not find him, the court determined not to receive his testimony.” (Townsend’s *Modern State Trials*, vol. i. p. 19.)

² 6 & 7 Wm. IV., cap. 114.

of his equals and neighbours, indifferently chosen, and superior to all suspicion. So that the liberties of England cannot but subsist, so long as this *palladium* remains sacred and inviolate, not only from open attacks, but also from secret machinations which may sap and undermine it, by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of commerce. And however *convenient* these may appear at first (as doubtless all arbitrary powers, well executed, are the most *convenient*), yet let it again be remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern.”¹

This fabric for the protection of personal liberty is secured and consolidated by the writ of Habeas Corpus.² This writ was the result of the ancient statutes, by which personal freedom was declared; and as a remedy it went directly to the breach of those statutes, by commanding the gaoler, or detaining party, to bring the person detained before a judge, and to certify the cause of his detainer or imprisonment—in order to a summary inquiry into the legality of the imprisonment. The right to the writ existed at common law,³

¹ Blackstone’s Comm., vol. iv. ch. 27, p. 349.

² The writ, in its modern form, is directed to the keeper of the gaol where the prisoner is detained, and it commands him to have the body of the prisoner, together with the day and cause of his being taken and detained, in one of the courts at Westminster (mentioned in the writ) on a day fixed, to undergo and receive all and singular such matters as the court shall then and there consider of him in this behalf.” From the principal words of the writ, and to distinguish it from other writs having the same initiatory words, it is called *habeas corpus ad subjiciendum*.

³ Blackstone’s Commentaries, vol. iii. p. 131.

or previously to the existence of any statute expressly granting it ; but, as we have seen, the common law right was insufficient to protect the patriots of the reign of Charles I. from imprisonment, where the prisoners were returned as detained by the special command of the king.¹ Statutes, therefore, were necessary to secure and enforce the absolute freedom of the people from the power of the crown, and of its privy council ; and the first of them is that which abolished the court of star-chamber, in the reign of Charles I. That act gave the remedy by habeas corpus to every person committed, restrained of his liberty, or suffering imprisonment, by the order and decree of the court of star-chamber or by any other court having or pretending to have the like jurisdiction, power, or authority to commit or imprison ;—by the command or warrant of the king, in his own person ;—or by the command or warrant of the council-board, or of any of the lords or others of the king's privy council. Every person so committed, upon demand or motion made by his counsel, or other employed by him for that purpose, unto the judges of the court of king's bench or common pleas, in open court, should, without delay upon any pretence whatever, and for the ordinary fees, have forthwith granted to him a writ of habeas corpus, directed to the gaoler or other detaining officials, who should, on the return of the writ, and upon security given for payment of charges, “ bring or cause to be brought the body of the party before the judges of the court from which the writ should issue, in open court, and should then likewise certify the true cause of his detainer and imprisonment ; and thereupon the court, within three court-days after such return, should proceed to examine and determine whether the cause of such commitment appearing upon the return be just and legal, or not, and should thereupon do what to justice should appertain, either by delivering, bailing, or remanding the prisoner.”²

This statute strengthened and confirmed the common-law right to the writ ; but it did not restrain the “ law's delays,”

¹ *Ante*, p. 280.

² 16 Car. I., cap 10 ; *ante*, p. 334.

nor abolish the subterfuges of the officers by whom the prisoners were detained. It provided only for the grant of the writ in term-time, in open court; and although by the common law the judges of the court of king's bench, or any one of them, could give their fiat for the writ as well in vacation as during term, in the former case making the writ returnable before the judge who awarded it, yet still obstructions arose; and in the case of Jenkes, who in 1676 was committed by the king in council for a turbulent speech at Guildhall, both the chancellor and the chief justice declined to award the writ in vacation. The oppression of an obscure individual (says Blackstone) gave birth in 1679 to the famous Habeas Corpus Act, which is frequently considered as another *magna charta* of the kingdom.¹

This celebrated act,² in its preamble, recites "that great delays had been used by sheriffs, gaolers, and other officers to whose custody any of the king's subjects had been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out an alias and pluries habeas corpus, and sometimes more,³ and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land,—whereby many of the king's subjects had been

¹ Blackstone's Commentaries, vol. iii. p. 135. Mr. Hallam does not admit that the case of Jenkes produced this famous act. The arbitrary proceedings (he says) of Lord Clarendon were what really gave rise to it. He refers to a succession of abortive bills to prevent the refusal of the writ of habeas corpus, whose titles are entered on the Commons' Journals, in the sessions from 1668 to 1675. The case of Jenkes occurred in 1676. He calls attention to the article of Clarendon's impeachment which charges him to have caused many persons to be imprisoned against law. (Hallam's Constitutional History, vol. ii. pp. 170–171.)

² 31 Car. II., cap. 2: "An Act for the better securing the Liberty of the Subject, and for prevention of Imprisonment beyond seas."

³ Sheriffs and other similar functionaries could not be attached for disobedience of writs, until three at least had been issued and served upon them in succession after the expiration of the return of each:—1 the writ,—we command you. 2. The *alias*,—as before we have commanded you. 3. The *pluries*,—as oftentimes we have commanded you.

and might be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation. For prevention whereof, and for the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters, it was enacted as follows:—

“When any person shall bring a writ of habeas corpus directed to sheriff, or gaoler, or other person whatsoever, for any person in his custody, and serve it on such sheriff, or gaoler, or leave it at the prison, such sheriff or gaoler shall *within three days* after service (unless the commitment were for treason or felony, plainly and specially expressed in the warrant of commitment), upon payment or security of charges not exceeding twelve-pence per mile, and that the prisoner will not escape by the way,—*make return of such writ*, and bring the body of the party so committed or restrained before the lord chancellor, or the judges or barons of the court, from which the writ shall issue; or before such person before whom the writ is made returnable; and shall then likewise certify the true causes of his detainer and imprisonment. If the place of commitment is beyond the distance of twenty miles from the court or judge, and not above a hundred miles, then such return shall be made within ten days; if beyond a hundred miles, then within twenty days after the delivery of the writ.

“In vacation time, and out of term, on complaint, and request in writing by or on behalf of any person committed or detained for any crime (unless for treason or felony, plainly expressed in the warrant of commitment, and other than persons convict or in execution by legal process), the lord-chancellor, or any one of the judges of the three courts, upon view of a copy of the warrant, or oath that a copy is denied, are authorized and required to award a habeas corpus, returnable *immediately* before himself or any other of the judges; and within two days after the party is brought before the judge, he shall discharge the prisoner from his imprisonment, taking his recognizance, with one or two sureties, in any sum according to their discretions, having

regard to the quality of the prisoner, and the nature of the offence, for his appearance in the court where the offence is properly cognizable,—unless it shall appear that the party is detained on legal process, order, or warrant out of some court having jurisdiction of criminal matters, or by some warrant signed and sealed by any of the judges, or by some justice or justices of the peace for matters or offences which by law are not bailable.

“The act by several clauses seeks to enforce on the officers strict observance of their duty. That they may not pretend ignorance of the import of the writ, it must be marked *per Statutum tricesimo-primo Caroli Secundi Regis*, and be signed by the person awarding the same. Officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent, within six hours after demand, a copy of the warrant of commitment and detainer, shall for the first offence forfeit to the prisoner £100, and for the second offence £100, and be incapable to hold or execute his office.

“Persons set at large by habeas corpus shall not be again imprisoned, or committed for the same offence, other than by the legal order and process of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause. Any person knowingly committing to prison contrary to this enactment, or knowingly aiding or assisting therein, shall forfeit to the prisoner £500.

“If a judge deny a writ of habeas corpus by the act required to be granted, after motion made of it, he shall forfeit to the prisoner £500.”

The act contains provisions for bringing parties to speedy trial, and for preventing imprisonment out of the king's dominions.¹ But it declared that its provisions should not extend to discharge out of prison persons charged in debt, or action, or process in any civil cause; and generally, it may be said, that where a person is in execution under the judgment of a court of competent jurisdiction, or even

¹ See *ante*, p. 412.

for contempt of such a court, the habeas corpus does not apply.¹

Such is the great Habeas Corpus Act, which has been the theme of so much eulogy, and so much eloquence. By Fox it was described "as the most important barrier against tyranny, and best framed for the liberty of individuals, that has ever existed in any ancient or modern commonwealth;"² and Sir James Mackintosh declared the writ of habeas corpus, and trial by jury, to be the most effectual securities against oppression, which the wisdom of man has hitherto been able to devise."³

The provisions of the act, and the benefit of the writ, were confined to cases of commitment or detainer for criminal or supposed criminal matter; but a modern statute has extended them to all persons confined or constrained of their liberty (except for criminal matter, or for debt, or by process in any civil suit), or to all persons detained without sufficient authority.⁴ Other more recent statutes have given the judges of the several courts power to grant the writs, and to make them returnable in any other court than their own; and it has been decided that a judge may in vacation grant a habeas corpus returnable before himself in chambers.⁵

¹ Wilson's Case, Queen's Bench Reports, vol. vii. p. 984.

² Fox's Reign of James II., p. 35.

³ History of England, vol. i. p. 219.

⁴ 56 Geo. III., cap. 100.

⁵ 11 Geo. IV. & 1 Wm. IV., cap. 70; 1 & 2 Vict., cap. 45; Leonard Watson's case, 2 Russ. and M. 639.

CHAPTER IX.

THE PEOPLE.

FREEDOM IN RELIGION.

Church of England.—Protestant Dissenters.—Toleration Act.—Dissenting Ministers.—Quakers.—Oaths.—Dissenting Places of Worship.—Toleration Act confirmed.—Reaction against Toleration.—Act against growth of Schism.—Reactionary Laws Repealed.—Dissenting Ministers' Relief Act.—Toleration Amendment Act.—Unitarian Relief Act.—Sacramental Test Repeal.—Indemnity Acts.—Congregations in Private Houses.—Roman Catholics.—Disarming Act.—Relief Act.—Jews.—Relief Acts.—General Law as to Places of Worship of Protestant Dissenters, Roman Catholics, and Jews.

THE constitution recognizes the Church of England as the state church, and the doctrines declared by its Thirty-nine Articles as the religion of the State; and it is imperative that the sovereign shall be in communion with the Church of England. In Scotland, by virtue of the Act of Union, the Presbyterian system of doctrine and government is recognized as the state religion; and in Ireland an ecclesiastical hierarchy, and institutions in all respects similar to those of the Church of England, are established; forming, with the Church of England, "the United Church of England and Ireland."

To those in communion with the Church of England, all the honours, dignities, offices, and emoluments of church and state, were at all times open; whilst those who dissented from it, whether as catholics or protestants, were not only in general disqualified for the possession of these advantages, but were subjected to coercion and punishment for re-

fusing communion with the established church. Protestant nonconformists, or dissenters, at the time of the Revolution, consisted of the several denominations of presbyterians, independents, baptists, and quakers; but with respect to the state, they were undistinguished; all being subject to severe and oppressive penal laws against nonconformity. At the Revolution they were considered to have entitled themselves to some relief from these laws, by co-operating with the established clergy in opposing the designs of James to introduce popery into the government; and they hailed the advent of William III., as their deliverer. Toleration¹ in religion was congenial to his mind; and in the declaration which he published before his arrival in England, he promised that, whilst preserving the established church, he would endeavour, by some means of comprehension, to bring within its fold those now separated from it by forms non-essential or indifferent; and where union was impracticable, he would protect and secure all who would live peaceably under his government, from every kind of persecution on account of their religion.

The fruit of these principles was the Toleration Act—"an act for exempting their Majesties' protestant subjects, dissenting from the Church of England, from the penalties of certain laws."² It relieved from the operation of numerous penal statutes³ "protestant dissenting laymen, who should

¹ "The word 'toleration' has rather a mournful, than a joyful sound; for in its judicial sense it merely signifies that the church authorized by the state, suffers others besides itself to exist in the land. But in the general language of literature, the sound common sense of all European nations understands by this term the not unreasonable demand that a man shall not be persecuted by the civil magistrate, or by a dominant church, if he, without violating the general civil regulations, worship God after his own fashion, in company with his fellow-believers." (Signs of the Times, by Chevalier Bunsen, p. 285.)

² 1 Wm. and Mary, cap. 18.

³ 23 Eliz., cap. 1 (*ante*, p. 213); 29 Eliz., cap. 6—an act for the more speedy and due execution of the act 23 Eliz., cap. 1; s. 14 of 1 Eliz., cap. 2 (*ante*, p. 207); 35 Eliz., cap. 1 (*ante*, p. 21); 3 James I., cap. 4 (*ante*, p. 230); 3 James I., cap. 5 (*ante*, p. 231); 22 Car. II., cap.

take the oaths of allegiance and supremacy to William and Mary,¹ and make and subscribe the declaration against popery mentioned in the statute 30 Charles II., stat. 2, cap. 1,² before justices at the general sessions of the peace; who were required to administer the oaths to any one who offered, to keep a register of them, and to grant a certificate of their having been taken,—on payment of sixpence for the oaths, and sixpence for the certificate. Dissenters having taken the oaths, who were appointed to any parochial office, and who should scruple to take the oaths or perform the services connected with the office, were allowed to appoint deputies. If dissenters at their meeting together for religious worship, locked, barred, or bolted the doors, they should receive no benefit from the law, and they were declared not exempted from payment of tithes or other parochial duties to the church or minister.

Dissenting ministers,—described as “persons dissenting from the Church of England in holy orders, or pretending to holy orders, and preachers and teachers of congregations of dissenting protestants,”—who took the oaths and subscribed the declaration required for laymen; and in addition declared their approbation of, and subscribed the Thirty-nine Articles, (except the 34th, 35th, and 36th, and these words of the 20th Article, viz. “The Church hath power to decree rites or ceremonies and authority in controversies of faith, yet,”) were relieved from the penalties of the act 17 Charles II., cap. 2, “for restraining nonconformists from inhabiting in corporations;”³ from the penalties of the act 22 Charles II., cap. 1, “for preaching at any meeting for the exercise of religion;”⁴ and from the penalty of £100 in the Act of Uniformity of Charles II., for officiating in any congregation for the exercise of religion—being by the Toleration Act allowed to preach in any congregation allowed by the act.

1 (*ante*, p. 401);—and all statutes against papists or popish recusants, except 25 Car. II., cap. 2, and 30 Car. II., stat. 2, cap. 1 (*ante*, pp. 408, 409).

¹ Pursuant to the act 1 Wm. and Mary cap. 1.

² *Ante*, p. 409.

³ 17 Car. II., cap. 2; *ante*, p. 395.

⁴ *Ante*, p. 401.

Anabaptists who “scrupled the baptizing of infants,” were allowed, in addition to the other excepted articles, to omit the 27th, touching infant baptism. Dissenting ministers and teachers were exempted from serving upon juries, and from being chosen to parochial offices.

“Quakers, who scrupled the taking of an oath, were allowed to make and subscribe the declaration against popery, with a declaration of fidelity, and a profession of their Christian belief, in words given in the act, declaratory of their belief in the Trinity, and that the Holy Scriptures were given by inspiration; upon which (and without any subscription of the Thirty-nine Articles) they not only obtained exemption from the acts from which the act relieved other protestant dissenters, but also from the act 5 Eliz., cap. 1,¹ and the act 13 & 14 Charles II., cap. 1, “for preventing mischief that may arise from certain persons called Quakers, refusing to take lawful oaths.”

“Papists and anti-trinitarians were not allowed the benefit of the act, it being declared that it should not extend to give ease, benefit, or advantage to any papist or popish recusant whatsoever, or any person that should deny, in his preaching or writing, the doctrine of the Blessed Trinity, as it was declared in the articles of religion.”

So far compliance with the act was voluntary, in order to obtain its benefits. But it also contained compulsory clauses of great severity. A justice of the peace might require, “any person that goes to any meeting for the exercise of religion,” to take the oaths; and in case of refusal the justice was required to commit him to prison without bail, and to certify his refusal to the quarter sessions; and upon a second tender and refusal, the person refusing was to be recorded for a popish recusant convict and suffer accordingly. He could only be admitted to take the oaths, after a second refusal, if within thirty-one days he produced two protestant witnesses, to testify on oath that they believed him to be a protestant dissenter; or a certificate

¹ *Ante*, p. 210.

under the hands of four protestants of the Church of England, or who had taken the oaths; and also a certificate under the hands and seals of six or more of the congregation to which he belonged, owning him for one of them. In default of these the justice was required to take a recognizance with two sureties in the penal sum of £50, to be levied of his goods and chattels, for his producing the certificates; and if he could not give such security, to commit him to prison, until he produced such certificates, or two witnesses.

“Dissenting places of worship were required to be registered. No congregation or assembly for religious worship should be allowed, unless the place of meeting should be certified either to the bishop of the diocese, or the archdeacon of the archdeaconry, or the justices in general or quarter sessions, and registered with one of them; each of such authorities being required to register the houses, and to give certificate of registry, for no greater fee than sixpence.”

Such is the celebrated Toleration Act,—the first step in religious liberty. It was hailed by the dissenters as a great acquisition. It rendered their mode of worship legal, and exempted it from punishment. They could now exercise it, not by the connivance, but under the protection of the government. But its operation was not extended to all religionists. Roman Catholics and Unitarians were excluded from its benefits; nor did it repeal the Corporation and Test Acts, which long continued to exclude dissenters from corporate and government offices. Dissenters, however, were not, like the Roman Catholics, excluded from the right, if otherwise qualified, of sitting and voting in the house of commons, the Parliamentary Test Act not containing provisions which extended to protestant nonconformists.¹

The Toleration Act was confirmed by an act of Queen Anne, and some of its provisions were explained in favour of protestant dissenters. It declared that any dissenter, not a minister or preacher, prosecuted upon any penal

¹ See *ante*, p. 408.

statute, for nonconformity, should obtain the benefit of the Toleration Act, by taking the oaths during the pendency of the prosecution. It also explained a doubt by declaring that dissenting ministers might preach in any other county than that in which they had qualified.¹

But this act was followed by another in the same reign, restrictive of the liberty of dissenters, the result of a surrender of their interests, by the whigs, to Lord Nottingham, for political purposes. "All persons, civil or military, in places of profit or trust, and all the common-councilmen in corporations, who should be at any meeting for divine worship (where there were above ten persons more than the family) in which the common prayer was not used, or where the Queen and Princess Sophia were not prayed for, should upon conviction forfeit their place of trust or profit; and such persons should continue incapable of any employment, until they should depose that for a whole year together they had been at no conventicle."² The whigs excused themselves for offering no opposition to the bill, that it might quiet the fears of those who thought the church was in danger.

This act was soon afterwards followed by another, in the same spirit, "to prevent the growth of schism," which reproduced and extended the Act of Uniformity of Charles II. by enacting that "none should keep a public or private school, or be a tutor or schoolmaster in England, unless he conformed to the liturgy of the Church of England, and obtained a license from a bishop," which could not be granted unless the applicant produced a certificate of his having received the sacrament according to the usage of the Church of England.³

The political purposes having been served, these reactionary laws were repealed in the reign of George I., by "an act for strengthening the protestant interest in these kingdoms." But it enacted, that if any mayor, bailiff, or

¹ 10 Anne, cap. 2.

² Burnet's Own Time, bk. vii., *anno* 1711.

³ 12 Anne, stat. 2, cap. 7.

other magistrate should resort to, or be present at, any public meeting for religious worship other than of the Church of England, in the gown, or with the ensigns of his office, he shall be disabled to hold such office, and be adjudged incapable to bear any public office whatsoever.¹

After a lapse of sixty years, the legislature in 1779 made another advance in religious freedom by "an act for the further relief of protestant dissenting ministers and schoolmasters." It relieved dissenting ministers who scrupled to subscribe the articles of religion, by declaring that if they took the oaths, and made the declaration against popery required by the Toleration Act; and also made and subscribed a declaration to the effect that the minister subscribing was a protestant, and, as such, that he believed that the Scriptures of the Old and New Testament contained the revealed will of God, and that he received the same as the rule of his doctrine and practice; such minister should be entitled to all the exemptions, benefits, privileges, and advantages of the Toleration Act, and of the confirmatory statute of Anne. Ministers so qualifying were exempted from serving in the militia, and from being prosecuted for teaching youth as a tutor or schoolmaster; but they should not hold the mastership of any college or school of royal foundation.²

This statute was a great advance, inasmuch as it required only a general avowal of belief in the Holy Scriptures, without regard to the articles or liturgy of any other church, as the foundation of toleration. Up to this period, however, there had been no repeal of the old persecuting acts; but in the year 1812, an act was passed "to repeal certain acts, and amend other acts relating to religious worship, and assemblies, and persons teaching or preaching therein." It wholly repealed the three acts of Charles II.³ It added some new but unimportant regulations to the system of registration of places of religious worship; and it declared that

¹ 5 Geo. I., cap. 4.

² 19 Geo. III., cap. 44.

³ 13 & 14 Car. I., against Quakers. 17 Car. II., against nonconformists inhabiting in corporations. 22 Car. II., cap. 1, "Conventicle Act."

all who should preach or teach at, or officiate in, or should resort to any congregation of protestants, whose place of meeting was duly certified, should be exempt from all pains and penalties, without taking the oaths. Preachers or teachers might however be required by a justice, by writing under his hand, to take the oaths and declarations specified in the act 19 Geo. III., and if any one refused, he should not be permitted to preach or teach until he had taken the oaths, on pain of forfeiture for every time he should preach, of not exceeding £10 nor less than 10s. But they could not be required to go to any greater distance than five miles from their own houses, for the purpose. Provisions were made requiring the justices, on demand of any protestant subject, to administer the oaths and to give a certificate, which should be conclusive evidence that the party had taken the oath. Another provision imposed punishment for disturbing such religious assemblies. The act was declared not to extend to quakers.¹

In the following session of 1813 was passed "an act to relieve persons who impugn the doctrine of the Holy Trinity from certain penalties." It repealed so much of the first Toleration Act as provided that it should not extend to give ease, benefit, or advantage to persons denying the Trinity; and also the provisions of the act 9 and 10 Wm. III., intituled "An Act for the more effectual Suppressing Blasphemy and Profaneness," so far as the same related to persons denying the Holy Trinity.²

The next act, passed in 1828, in the reign of George IV., under the administration of the Duke of Wellington, placed protestant dissenters on an equality with their fellow-subjects of the Church of England, as to the admission to corporate and other civil and military offices. It is "an act for repealing so much of several acts as imposes the necessity of receiving the sacrament of the Lord's Supper, as a qualification for certain offices and employments."³ It re-

¹ 52 Geo. III., cap. 155.

² 53 Geo. III., cap. 160.

³ 9 Geo. IV., cap. 17.

pealed so much of then existing acts as required persons chosen to civil, and military, and corporate offices, to take the sacrament according to the rites of the Church of England;¹ and it substituted a declaration, in lieu of the sacrament, to be made and subscribed by every person chosen to be mayor, alderman, recorder, bailiff, town-clerk, or common-councilman, or to any office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque-port within England and Wales, within one calendar month next before or upon his admission to any such office or trust. The declaration is as follows:—

“I A. B. do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a Christian, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of — to injure or weaken the protestant church, as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges, to which such church, or the said bishops and clergy, are or may be by law entitled.”

The declaration must be made and subscribed before the person who, by the charter of the cities, corporations, boroughs, and cinque-ports, ought to administer the oaths, for the due execution of the office; or before two justices of the peace; and it must be entered in a book or record kept for the purpose, or filed amongst the civic records. Omission or neglect to subscribe the declaration renders the office void. Every person thereafter admitted into any office or employment;—or who should accept from the crown any patent, grant, or commission, and who,—by his admittance into such office or employment, or place of trust; or by his acceptance of such patent, grant, or commission; or by the receipt of any pay, salary, fee, or wages, by reason thereof,

¹ The acts so partially repealed are, 13 Car. II., stat. 2, cap. 1 (*ante*, p. 384); 25 Car. II., cap. 2 (*ante*, p. 407); 16 Geo. II., cap. 30, “Indemnity Act,” 1743.

—would by the laws in force immediately before the passing of the act, have been required to take the sacrament, should make and subscribe the declaration within six months, or in default, his office or appointment to be void. That declaration must be made either in the court of chancery, the court of king's bench, or at the quarter sessions of the county where the declarant resides, and must be preserved among the records of the court. But no naval officer below the rank of rear-admiral, nor military officer below the rank of major-general in the army, nor colonel in the militia, in respect of his naval or military commission; and no commissioner of customs, excise, stamps, or taxes, or any person holding any of the offices concerned in the collection, management, or receipt of those revenues; or any officer concerned in the collection, management, or receipt of the revenues subject to the authority of the postmaster-general, can be required to make the declaration.¹

This statute is general, and therefore applies to all persons indiscriminately, and not merely to dissenters. Its effect on the latter was to raise them to the level of conformists, as regards the offices within the scope of the act.

The severity of the Corporation and Test Acts was in some degree mitigated by Indemnity Acts, which commencing in 1743² were annually passed to indemnify persons who had accepted offices without complying with the tests, from all penalties, provided they complied with them, within the time limited by the act. These acts being repeated every year afforded full protection if a prosecution were not commenced, or the party were not removed from his office, in the interval between the two acts, when the protection was in abeyance. It has become a constitutional rule to pass an act of indemnity, of this nature, every year; covering lapses of forms in the acceptance of offices.

Some further relaxation of the laws restrictive of the freedom of religious worship was made in 1855 by "an act³ for

¹ 9 Geo. IV., cap. 17.

² 16 Geo. II., cap. 30.

³ 18 & 19 Vict., cap. 36.

securing the liberty of religious worship." It was passed at the instance of members of the established church who wished to have religious worship in private houses, but who found themselves prevented by the act of George III., passed to restrict religious worship by protestant dissenters, which enacted "that no congregation or assembly for religious worship of protestants, at which there should be present more than twenty persons besides the immediate family and servants of the person in whose house, or upon whose premises, such meeting, congregation, or assembly should be held, should be permitted or allowed unless the place of meeting be certified as directed in the act; and which rendered any person permitting such congregation to meet, liable to a penalty of not more than £20, nor less than 20s., for every meeting." The provisions of the act extend the rights of dissenters as well as of members of the established church,—by enacting that nothing in the recited act of George III., shall apply—

1. To any congregation for religious worship held in any parish, or ecclesiastical district, and conducted by the minister, or in case the incumbent is not resident, by the curate, or by any person authorized by them respectively.

2. To any congregation meeting in a private dwelling-house, or on the premises belonging thereto.

3. To any congregation meeting occasionally in any building not usually appropriated to religious worship; and no person permitting a congregation to meet in any place occupied by him shall be liable to any penalty for so doing.

The exciting motive of the Revolution was a dread and dislike of popery, and while toleration was granted to protestant nonconformists, the rigour of the law was increased against ROMAN CATHOLICS. In the first parliament of William and Mary, there was passed "an act for the removing papists, and reputed papists, from the cities of London and Westminster, and ten miles' distance from the same." The lord mayor, and the magistrates of London, Westmin-

¹ 52 Geo. III., cap. 155, *ante*, p. 561.

ster, and Southwark, and of the counties of Middlesex, Surrey, Kent, and Essex, were required to arrest all persons within those cities or within ten miles of them, being, or reputed to be papists, and to tender them the declaration contained in the statute of Charles II.¹ If they refused, and continued within the prescribed limits, they became popish recusant convicts.²

Another act in the same session, "for the better securing the government by disarming papists and reputed papists," empowered and required any two justices of the peace, who should know, or suspect, or should be informed that any person was, or was suspected to be a papist, to tender him the declaration; and in case of refusal, to certify his name to the quarter sessions. The recusant was prohibited from having in his house or possession any arms, weapons, gunpowder, or ammunition (but what the magistrates considered necessary for the defence of his house and person), or to keep in his possession, or in the possession of any other person for his use, any horse or horses above the value of £5 to be sold.³

The long and dreary legislation against Roman Catholics which has occupied so much of our previous history, was at length put an end to by an act passed under the administration of the Duke of Wellington and Sir Robert Peel. Its title is "An Act for the Relief of his Majesty's Roman Catholic subjects."⁴ After stating that "by various acts of parliament, restraints and disabilities were imposed on Roman Catholics, to which other subjects were not liable, and that it was expedient that such restraints and disabilities should be from thenceforth discontinued; and also that by various acts certain oaths and certain declarations, commonly called the Declaration against Transubstantiation, and the Invocation of Saints, and the Sacrifice of the Mass, as practised in the Church of Rome, were or might be required to be taken, made, and subscribed as qualifications for sit-

¹ Stat. 2, cap. 1.

² 1 Wm. and Mary, cap. 1.

³ *Idem*, cap. 15.

⁴ 10 Geo. IV., cap. 7.

ting and voting in parliament, and for the enjoyment of certain offices, franchises, and civil rights; it was enacted that all such parts of such acts as required the declarations, or either of them, to be made or subscribed by any of his Majesty's subjects, as a qualification for sitting and voting in parliament, or for the exercise or enjoyment of any office, franchise, or civil right, be (save as after excepted) repealed.

"Any person professing the Roman Catholic religion, being a peer, or who should be returned as a member of the house of commons, should sit in either house respectively, being in all other respects duly qualified, upon taking and subscribing the oath mentioned in the act,¹ instead of the oaths of allegiance, supremacy, and abjuration,—and should vote at elections for members of parliament, and of representative peers of Scotland and Ireland, and be elected such representative peers. But no person in holy orders in the church of Rome shall be capable of being a member of the house of commons.

"Roman Catholics may hold all civil and military offices and places of trust and profit under the crown upon taking the oath, except those of guardians and justices, or of regent of the United Kingdom, lord-chancellor, lord-keeper, or lord-commissioner of the great seal; or lord-lieutenant, lord-deputy or chief governor of Ireland, or high commissioner to the general assembly of the Church of Scotland.

"They may be members of lay corporations, and hold office therein, and vote in any corporate election or other proceeding; but they must not vote at or join in the election, presentation, or appointment to any ecclesiastical benefice or office in the gift of a lay corporation; nor can they hold any office in the Church of England or Ireland, or the Church of Scotland, or the universities, or colleges.

"They are prohibited from assuming or using the name, style, or title of archbishop of any province, bishop of any bishopric, or dean of any deanery in England or Ireland, on pain of forfeiting and paying, for every such offence £100;

¹ See the oath, *ante*, p. 444.

and any Roman Catholic ecclesiastic wearing the habits of his order, save within the usual places of worship of the Roman Catholic religion, or in private houses, shall, on conviction, forfeit for every offence £50.

“Where the right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of the crown held by a Roman Catholic, the right of presentation shall be exercised by the archbishop of Canterbury. No Roman Catholic shall directly or indirectly advise the crown or the lord-lieutenant of Ireland, concerning the disposal of any ecclesiastical preferment in England, Ireland, or Scotland; on conviction, he shall be deemed guilty of a high misdemeanour, and disabled for ever from holding any office, civil or military, under the crown.”

The prohibition of assuming ecclesiastical titles is, by a later act, extended so as attach the penalty of £100 to procuring from Rome, or publishing any bull or authority for constituting archbishops or bishops of sees within the United Kingdom; or for assuming or using the name, style, or title of archbishop, bishop, or dean of any city, town, or place in the United Kingdom, although it be not a see or deanery of the Church of England.¹

THE JEWS, natives of the country, did not obtain any legislative recognition as British subjects, at the Revolution, nor until the reign of her present Majesty. In the year 1753 an act was passed to enable foreign Jews to be naturalized without taking the sacrament; but it was repealed in the following year, as a concession to popular feeling, then strongly adverse to the Jews. The Sacramental Test Repeal Act facilitated, but did not remove all obstacles to the admission of Jews to corporate offices; for although it relinquished the sacrament, the substituted declaration was sanctioned by the terms, “upon the true faith of a Christian.” The declaration was altered, in 1845, in favour of the Jews, by an act “for the relief of persons of the Jewish religion, elected to municipal offices,” which enacted that

¹ 14 & 15 Vict., cap. 60.

instead of the declaration in the Sacramental Test Repeal Act, every person of the Jewish religion shall be permitted to make and subscribe the following declaration within one calendar month next before, or upon his admission into the office of mayor, alderman, or any municipal office in any city, town, town corporate, borough, or cinque-port within England or Wales.

Declaration.

“I A. B. being a person professing the Jewish religion, having conscientious scruples against subscribing the declaration contained in the Act 9 Geo. IV. cap. 17, do solemnly, sincerely, and truly declare that I will not exercise,” etc., as in the declaration, to the end.¹

The act which enabled the houses of parliament to admit Jews, by passing resolutions for omitting in their favour the words “and I make this declaration upon the true faith of a Christian,” declared that in all other cases, except for sitting in parliament, or in qualifying to exercise the right of presentation to an ecclesiastical benefice in Scotland, where a Jew is required to take the oath, the declaration shall be omitted. The Jews are prohibited from holding those offices and ecclesiastical privileges which are denied to Roman Catholics.²

The legislature has of late years applied to all religious bodies, not being part of the established church, whether Roman Catholics, Protestant Dissenters, or Jews, the same laws as to the registration of their places of worship. The registration required by the Toleration Act, was applied to Roman Catholic places of worship in 1791,³ and by a more recent act Roman Catholics, in respect of their schools, places for religious worship, education, and charitable purposes, in Great Britain, and property held therewith in England, are made subject to the same laws as protestant dissenters.⁴ An act to the same effect was passed in favour of the Jews.⁵ A

¹ 8 & 9 Vict., cap. 52. See the Declaration, *ante*, p. 562.

² 21 & 22 Vict., cap. 4. *Ante*, p. 567.

³ 31 Geo. III., cap. 32.

⁴ 2 & 3 Wm. IV., cap. 115.

⁵ 9 & 10 Vict., cap. 59.

general register-office, for the registering of births, deaths, and marriages, having been established by act of parliament, the registration of these places of worship was transferred to the registrar-general, in lieu of the bishops' and archdeacons' courts, and the court of quarter-sessions, where the Toleration Act required the chapels to be registered.¹ But again that act was repealed by another act, which enacted that if the congregation should desire it, but not otherwise, their place of worship should be certified to the registrar-general. It also provided that the places of worship of protestant dissenters, Roman Catholics, and Jews, or of any other body or denomination of persons, may be certified to the registrar-general through the registrar of the district, who should record the same; and such registration should be in lieu of that required by the Toleration Act.²

¹ 15 & 16 Vict., cap. 36.

² 18 & 19 Vict., cap. 81; A.D. 1855. A congregation may certify themselves as persons who object to be designated by any distinctive religious appellation.

CHAPTER X.

THE PEOPLE.

THEIR RIGHT TO LOCAL SELF-GOVERNMENT.

Local Self-Government.—In Boroughs.—Counties.—Parishes.

THE principle of Local Self-Government which exists in England, has doubtless exercised very great influence in the production of the freedom enjoyed under the constitution. It is not intended to make an attempt to trace that influence through the gradual advance of the institutions, but only to suggest some facts without which the full extent of the liberty and power possessed by the people cannot be fully appreciated. The nature of the Anglo-Saxon courts and moots was favourable to self-exertion and self-reliance on the part of the people; but at a later period the chartered boroughs stand out conspicuously as institutions imbued with the spirit of freedom, and at the same time furnished with power to advance and defend it. These fought out their own independence from their feudal lords, and became the seats of self-government, on principles opposed to arbitrary or centralized power. The burgesses, with the mayor or portreeve, and aldermen, as their executive officers, elected by them, regulated the affairs of their boroughs, in trade and police, independently of any direct supervision on the part of the crown or its officers, and without any appeal on the part of the inhabitants, except through the courts of law, when cases arose of an illegal character. The tendency of these institutions was republican or democratic, rather than monarchical; and the election of members to the house of commons being vested in the boroughs, they

returned to parliament, for the most part, those patriots by whom the battle of the constitution was fought. Charles II. made an attempt to get the boroughs, returning members to parliament, under the influence of the crown, by an attack upon their ancient charters, and by forcing or persuading the burgesses to accept new charters, but he did not disturb their municipal authority. That has now been regulated and brought under one system by the act to provide for the regulation of the municipal corporations in England and Wales.¹ It vests in the inhabitant householders rated to the relief of the poor, the election of burgesses, from whom the mayor and aldermen are elected. The mayor becomes a justice of the peace, and returning officer of the borough at elections of members of parliament,—and the mayor, aldermen, and burgesses are the council of the borough, in whom, or a majority in case of division, all authority is vested. They are empowered to make rates on the inhabitants for watching, lighting, and paving the borough, to appoint constables, to make bye-laws, and in general to regulate the municipal affairs of the borough; and all without the control or supervision (except in the disposal of their property) of any other central authority than the courts of law and equity.

The affairs of the counties are, in like manner, entrusted to the management of their principal inhabitants. The magistrates appointed by the crown, through the medium of the lord-lieutenant and consisting of the principal landowners of the county, regulate the county affairs by a system of self-government. Assembled in their court of quarter sessions they have jurisdiction to try small felonies, and to decide appeals from the several parishes of the county, in regard to rates and assessments for the relief of and the settlement of the poor. They regulate, in sessions, or at county boards, the construction and repair of bridges, public roads, shire-halls, prisons, and lunatic asylums; and they superintend the apprehension, conveyance, and prosecution of cri-

¹ 5 & 6 Wm. IV., cap. 76; A.D. 1835.

minals,—the expenses of witnesses, and of the county police. For these in quarter-sessions they make county rates on the freeholders. These important duties are discharged by persons resident within the counties, and who are necessarily the most considerable contributors to the rates; and over whose acts there is no other central control than the courts of law and equity, when cases arise in which the legality of their acts is questioned.

The several parishes of the kingdom exercise self-government in parochial affairs, by the election, from the inhabitants, of churchwardens and overseers who administer the laws, for the relief of the poor; and of Boards of parishioners, who discharge the various duties of the acts for the repair of the highways, and the sewers, and for the preservation of health. The magnitude of the funds raised and distributed for the relief of the poor, throughout the kingdom, and the effect of their distribution on the public prosperity, made it necessary to adopt a uniform system of management and relief; and therefore the functions of the parochial boards for relief of the poor are exercised under the superintendence of a supreme poor-law board, appointed by the crown, but responsible to parliament. Its president is usually in the cabinet, and a member of the house of commons. There is also a supreme Board of Health, but with these exceptions:—the administration of the local affairs, of each division and subdivision of the kingdom, is vested in its inhabitants, with an authority controlled only by the law and the courts of justice.

Such is the English Constitution, and such the liberties it confers,—liberties which dignify the lives of Englishmen, by the consciousness that they are Freemen. It admits the people to participate in the supreme power, and it opens the highest offices and honours of the State to the lowliest-

born. Through its institutions, public opinion has free expression and controlling influence,—the laws are justly and impartially administered,—legislation rises and expands with the advance of knowledge, and proposes as its true end, the happiness of the people. May these blessings be zealously guarded and long preserved by Englishmen ; and when called upon to alter and adapt the Constitution to the exigencies of advancing civilization, may they be restrained to moderation and prudence, by reverence for institutions won by the fortitude and moulded by the generous spirit and sagacity of our ancestors, and under which England has become prosperous, happy, and free !

ERRATA.

- Page 167, note 1, *for* Edward IV. *read* Edward VI.
„ 182, line 4, *insert* spiritual and *before* temporal.
„ 424, line 9, *for* monarch *read* monarchy.
„ 426, note 1, *for* 1848 *read* 1858.
„ 456, line 27, *for* accused *read* accusers.

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